TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 662.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LEAVENWORTH, PLAINTIFFS IN ERROR,

vs.

ROBERT A. BARNES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JULY 14, 1876.

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3 In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, defendant.

Be it remembered that on this day, to wit, September 14th, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his petition, precipe, and security for costs in said entitled cause; which said petition, precipe, and security for costs are in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, defendant. } Petition.

The plaintiff, Robert A. Barnes, alleges that he is a resident and citizen of the State of Missouri, and that the defendant, The Board of County Commissioners of the County of Leavenworth, is a citizen of the State of Kansas.

1st. The plaintiff complains of the defendant, The Board of
4 County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said defendant, the County of Leavenworth, by its duly-authorized agents, made and executed its bond of that date, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, which interest was represented by coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time, as they matured, been paid by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.30, with interest thereon from the 1st day of July, A. D. 1875.

2nd. The plaintiff, further complaining of the said defendant, The Board of County Commissioners of the County of Leavenworth, alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the county of Leavenworth, by its duly-authorized agents, made

5 and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they mature, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

3rd. Plaintiff further complains of the said defendant, The Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1875, the defendant, the said county of Leavenworth, by its duly-authorized agents,

6 made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they mature, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

4th. Plaintiff further complains of the said defendant, The Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Mis-

7 souri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed

by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupon for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

5th. Plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Missouri Pacific Rail-
8 road Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

6th. Plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth
9 County promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons thereto attached *are* herewith filed, marked "A," and made part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

7th. Plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said defendant, the said county of Leavenworth, by its duly-authorized agents, made
10 and executed its certain other bond of that date, whereby the said

county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as *as* aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, and interest thereon from the 1st day of July, A. D. 1875.

8th. The plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agent, made and ex-
11 ecuted its certain other bond of that date, whereby the said county of Leavenworth promised to pay the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond aforesaid.

The plaintiff says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33 with interest thereon from the 1st day of July, A. D. 1875.

9th. Plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said county
12 of Leavenworth, by its agents, duly authorized, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons thereto attached (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bonds as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

10th. The plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and
13 executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth and Missouri Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with the unpaid coupons attached thereto for the interest thereon, (except the number,) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

11th. The plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leav-
14 enworth County promised to pay to the Leavenworth, Missouri and Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi annually, with coupons attached thereto for the interest thereon; a copy of which said bond and the unpaid coupons attached (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

12th. Plaintiff further complains of the said defendant, The Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the first day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leav-
15 enworth County promised to pay to the Leavenworth and Missouri Pacific Railroad Company or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the

rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest; a copy of which said bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

13th. The plaintiff further complains of the said defendant, the Board of Commisioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said
16 County of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth & Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from the defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

14th. The plaintiff further complains of the said defendant, the Board of Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said
17 County of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth & Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which said bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of the said bond and the coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that

there is due thereon from said defendant to this plaintiff the sum of one thousand and ninety-three & $\frac{33}{100}$ dollars, ($1,093.33,) with interest thereon from the 1st day of July, A. D. 1875.

15th. The plaintiff further complains of the said defendant, the Board of Commissioners of the County of Leavenworth, and alleges that
18 heretofore, to wit, on the 1st day of July, A. D. 1875, the defendant, the said County of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth & Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

16th. The plaintiff further complains of the said defendant, the Board of Commissioners of the County of Leavenworth, and alleges that
19 heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said County of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth & Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

17th. The plaintiff further complains of the said defendant, the Board of Commissioners of the County of Leavenworth, and alleges that
20 heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said County of Leavenworth, by its duly-authorized agents, made and executed its certain other bond of that date, whereby the said Leavenworth County promised to pay to the Leavenworth & Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached

thereto for the interest thereon; a copy of which bond and the unpaid coupons attached thereto (except the number) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest-coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons attached to the bond as aforesaid.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due on said bond and coupons the sum of $1,093.33, with interest thereon from the 1st day of July, A. D. 1875.

And the plaintiff further alleges that the number of the bonds, a copy of one of which is hereto attached, are, respectively, as follows,
21 viz: Nos. 21, 26, 30, 45, 51, 57, 62, 70, 71, 73, 77, 80, 83, 11, 12, 14, & 35.

And the plaintiff alleges that there is due to him from said defendant on said bonds and coupons the sum of eighteen thousand five hundred and eighty-six dollars and sixty-one cents, ($18,586.61,) with interest thereon from the 1st day of July, A. D. 1875, at the rate of seven per cent. per annum. Yet the said defendant, though often requested, has not paid said sum of money, or any part thereof, or interest thereon; hitherto hath and still does wholly neglect and refuse to pay said sum of money or any part thereof.

And the said plaintiff alleges that at all the times herein stated the said Leavenworth and Missouri Pacific Railroad Company was a corporation duly organized under the laws of the State of Kansas.

Wherefore plaintiff prays and demands a judgment against the said defendant for the sum of $18,586.61, with interest thereon at seven per cent. per annum from the 1st day of July, A. D. 1875, and for costs of suit.

STILLINGS & FENLON,
Attorneys for Plaintiff.

Præcipe.

Clerk of the above-entitled court will please issue a summons, directed to the United States marshal for the district of Kansas,
22 to serve on the defendant, returnable according to law. Suit brought for recovery of money; amount claimed, $18,586.61, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875, & for costs of suit. See petition.

STILLINGS & FENLON,
Attys. for Plaintiff.

$1,000. A.—*Bond.* No. 21.

BOND OF THE COUNTY OF LEAVENWORTH, STATE OF KANSAS.

On the first day of July, 1875, the county of Leavenworth will pay to the Leavenworth & Missouri Pacific Railroad Company or bearer, at the Metropolitan National Bank, in the city of New York, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum from and after the first day of September, payable semi-annually on the first days of March and September, for which coupons are hereto attached, which coupons are receivable for all county dues.

This bond is one of two hundred and fifty of like amount issued in payment of the subscription of the said county of Leavenworth to the capital stock of the Leavenworth & Missouri Pacific Railroad Company,

under the provisions of the act of legislature of the State of Kansas entitled, "An act to authorize counties and cities to issue bonds
23 to railroad companies," approved February 10th, 1865, and for the payment of which the faith of the county is pledged.

In testimony whereof the board of county commissioners of the said county has this first day of July, A. D. 1865, caused this bond to be signed by the chairman of the said board, and countersigned by the county clerk of said county, and attested by the seal of the said county.

C. N. PALMER.

Countersigned:
[SEAL.] A. GATES, *Clerk.*

$23.33. *Coupons.* 20.

On the first day of July, 1875, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank in the city of New York, twenty-three dollars and twenty-three cents, being interest on bond No. 21, issued to the Leavenworth and Missouri Pacific Railroad Company.

C. N. PALMER,
Chairman.

$35.00.

On the first day of March, 1875, the county of Leavenworth will pay to bearer, at the Metroplitan National Bank of New York, thirty-five dollars, being interest on bond No. 27, issued to the Leavenworth & Missouri Pacific Railroad Company.

C. N. PALMER.
Chairman.

$35.00. 18.

On the first day of September, 1874, the county of Leavenworth
24 will pay to the bearer, at the Metropolitan Bank of New York, thirty-five dollars, being interest on bond No. 21, issued to the Leavenworth and Missouri Pacific Railroad Company.

C. N. PALMER,
Chairman.

Upon which petition and præcipe are the following endorsements, to wit: "No. 1374. Robert A. Barnes, plaintiff, vs. the Board of Commissioners of the County of Leavenworth. Petition & prec. Filed Sept. 14, 1875. A. S. Thomas clerk. Stillings & Fenlon, attorneys for plff."

And on this day, to wit, September 14, 1875, the said plaintiff, by his attorneys, filed in the clerk's office of said court his security for costs in said entitled cause, in the words and figures following, to wit:

Security for costs.

UNITED STATES OF AMERICA,
The State of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COMMISSIONERS OF THE COUNTY of Leavenworth, defendant. } No. . Security for costs.

Stillings & Fenlon, resident' of Leavenworth County, Kansas, hereby

bind and obligate themselves that the plaintiff above named will pay all the costs that may accrue in the above-entitled action in case he shall be adjudged to pay the same, and we further bind and obligate ourselves that he will pay all costs made by him in said action in case judg-
25 ment be obtained against the defendant therein and the same cannot be collected from the defendant. Given under our hands at Leavenworth City, Kansas, this 13th day of September, 1875.

STILLINGS & FENLON.

I approve the above bond and the suret' thereto this day of 187 .

Clerk.

Said bond is endorsed as follows, to wit: "No. 1374. Security for costs. Robert A. Barnes v. the Board of Coms. of Leav'n'th County. Filed Sept. 14, 1875. A. S. Thomas, clerk. Approved, A. S. Thomas, clerk."

And on this day, to wit, September 14, A. D. 1875, the clerk of said court issued a writ of summons in said entitled cause; which said writ of summons, with the marshal's return thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, district of Kansas, ss:

The United States of America to the marshal of the district of Kansas, greeting:

You are hereby commanded to notify the Board of County Commissioners of the County of Leavenworth that it has been sued by Robert A. Barnes in the circuit court of the United States for the district of Kansas, and that unless it answer by the fourteenth day of October, A. D. 1875, the petition of the said Robert A. Barnes against it, filed in the clerk's office of the said court, such petition will be taken as true,
26 and judgment rendered accordingly. You will make due return of this writ on the 24th day of September, A. D. 1875.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 14th day of September, A. D. 1875.

[SEAL.] A. S. THOMAS, *Clerk.*

(Endorsed:) Suit brought for the recovery of money. Amount claimed, $18,586.61, with interest from the first day of July, A. D. 1875, at the rate of 7 per cent. per annum, & for costs of suit. Stillings & Fenlon, attorneys for plaintiff.

Endorsed as follows, to wit:

U. S. marshal's return.

DISTRICT OF KANSAS:

Rec'd this writ Sept. 14, 1875, and for return of same I certify that I did, on the 16th day of Sept. 1875, serve this writ on the within-named defendant, the Board of County Commissioners of the County of Leavenworth, at Leavenworth Co., State & district of Kansas, by delivery to Oliver Diefendorf personally a true & certified copy hereof, with all the endorsements thereon; he, the said Oliver Diefendorf, being then and

there the clerk of said defendant, the Board of County Commissioners of the County of Leavenworth, also clerk of the said Leavenworth County, & the person on whom service is directed to be made.

W. S. TOUGH,
U. S. Marshal.
By CHAS. H. MILLER,
Deputy Marshal.

Fees, $5.90.

No. 1374. Circuit court of the United States, district of Kansas. Robert A. Barnes vs. The Board of County Commissioners of the County of Leavenworth. Summons. Issued Sept. 14, 1875. Returnable Sept. 24, 1875. Filed Sept. 23, A. D. 1875. A. S. Thomas, clerk. Stillings & Fenlon, attorneys for plaintiff.

And on this day, to wit, October 19, 1875, the defendant, by its
27 attorneys, filed in the clerk's office of said court its answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

ROBERT BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, defendant. } Answer.

And now comes the said defendant, the Board of County Commissioners of the County of Leavenworth, and for answer to the petition of the plaintiff filed herein—

First. Denies each and every allegation therein contained, and in each and every of the several pretended causes of action therein set forth, except that the plaintiff is a citizen of the State of Missouri, and that the defendant is a citizen of the State of Kansas.

Second. For a second and further ground of defense and answer herein, defendant refers to each of his other grounds of defense herein as parts hereof. And further aver' that *that* the pretended railroad company mentioned and described in said pretended bonds and coupons, and referred to in said petition as the Leavenworth and Missouri Pacific Railroad Com-
pany, is not now, nor was not on the first day of July, A. D. 1865,
28 and never has been, a corporation organized or existing under the laws of the State of Kansas, or any other State or government or country, as a railroad company or corporation, or otherwise.

And further aver' that said pretended railroad company had not, on the first day of July, A. D. 1865, and has not at any time since, located its railroad, or any railroad, to, into, through, from, or near to the county of Leavenworth, in said State, or elsewhere.

And further avers that said defendant did not, on or before, and has not since the first day of July, A. D. 1865, ever subscribed to the capital stock of said pretended railroad company or corporation in the name and for the benefit of said county, or otherwise at all, the sum of two hundred and fifty thousand dollars, or any other sum of money or number

of shares, or any amount whatever, and does not now own or hold, and never has owned and held, any amount of stock, money, or shares whatever as stock in the capital stock of said pretended railroad company.

And further aver' that said defendant did not at any time before the pretended issue of said pretended bonds, and after the location of said pretended railroad as aforesaid mentioned, subscribe to the capital stock of said pretended railroad company said sum of two hundred and fifty thousand dollars, or any other sum as aforesaid, or otherwise.

29 Third. For a third and further ground of defense and answer herein, defendant refers to each of his other grounds of defense herein, as parts hereof, and further avers that said defendant never received any consideration of value for said pretended bonds or coupons.

Fourth. For a fourth and further ground of defense and answer herein, defendant refers to each of his other grounds of defense herein as parts hereof, and further aver that all said pretended bonds and coupons are held and claimed without any authority of law, and are null and void; and that said defendant, or its officers or pretended agents in that behalf, never had any authority of law or in fact for issuing said pretended bonds or coupons in the form thereof or otherwise at all, or for subscribing as aforesaid or otherwise to said capital stock in the sum of two hundred and fifty thousand dollars, or any other sum whatever.

Fifth. For a fifth and further ground of defense and answer herein, defendant refers to each of his other grounds of defense herein as parts hereof, and further aver' that said pretended law and act of the legislature of the State of Kansas entitled "An act to authorize counties and cities to issue bonds to railroad companies," pretended to have been approved February 10th, 1865, did not then nor has it since become a law of the said State of Kansas; that the same was not published by authority of the legislature of the State of Kansas on the 14th day of February, A. D. 1865, or at any time thereafter before the pretended issue of

30 said bonds or coupons, or since that time, and that said pretended act was not, and never has been, passed, or enacted, signed, enrolled, or authenticated in pursuance of or in accordance with the constitution of the State of Kansas, and that the same has never been or become a law *a law* of said State of Kansas; that said pretended law was pending in said legislature at its session commencing January 10th, 1865, by senate bill No. 63, substituted for senate bill No. 62 and 63; and that it was not read on three separate days in each house, and there was no emergency, and the rules were not suspended; that said bill was not passed by a majority of all the members of said legislature elected to each house, and that the yeas and nays were not taken and entered on the journal upon the final passage of said bill in the senate, and that said bill was never signed by the presiding officer of said senate.

Sixth. For a sixth and further ground of defense and answer herein, defendant refers to each of its other grounds of defense herein as parts hereof, and further avers that at no time previous to the pretended issue of said bonds and coupons did the board of county commissioners of said county of Leavenworth submit to a vote of the qualified electors of said county, at a general or special election, called by said board of county commissioners, by giving twenty days' notice in some newspaper published and having a general circulation in said county or otherwise, the question of issuing said pretended bonds and

31 coupons, and subscribing to said capital stock of said pretended railroad company in any sum whatever, nor at any such election called as aforesaid were a majority of the votes cast in favor of issuing said pretended bonds or any bonds, and during the entire year 1865

there was published in said county a newspaper having a general circulation therein; and defendant further avers that the question of issuing said pretended bonds or coupons, or subscribing to said capital stock of said railroad company by said defendant in the sum of two hundred and fifty thousand dollars, or any other sum or amount, was never submitted to a vote of the qualified electors of said county at any election called by said defendant or its board of commissioners according to law, nor was the issue of said pretended bonds or coupons ever authorized by any vote of the qualified electors of said county, and at no time after said pretended election was there a canvass made of such votes by any tribunal authorized to make the same, or by any authorized agent of the said county of Leavenworth.

Seventh. For a seventh and further ground of defense and answer herein, defendant refers to each of its other grounds of defense herein as parts hereof, and further avers that said plaintiff is not an innocent holder for value of said pretended bonds or coupons, but that, at the time when he became the owner and holder thereof, he had due
32 and sufficient and legal notice that they were illegal and void, and had been issued and delivered without any authority of law, and such notice of all the facts and things aforesaid & hereinafter alleged.

Eighth. For an eighth and further ground of defense and answer herein, defendant refers to each of its other grounds of defense herein as parts hereof, and further avers that said pretended bonds and coupons were not issued in payment of calls or assessments made upon all the stocks of such pretended railroad company, but that at the date of such pretended issue of said pretended bonds no valid or legal calls or assessments had been made by said pretended company, upon all the pretended shares of stock in said pretended company, for or of one hundred cents on the dollars of said capital stock, but that each and every and singular the calls and assessments made were illegal, fraudulent, and void.

And defendant further denies each and every allegation in said petition not hereinbefore denied; and of all these defendant puts itself upon the country.

L. M. GODDARD &
JOHN C. DOUGLASS,
Attorneys for Defendant.

STATE OF KANSAS,
County of Shawnee, ss :

John C. Douglass, of lawful age, being sworn, deposes and says that he is the attorney of said defendant in said action, and that all
33 the several allegations, averements, denials, and facts stated and contained in said answer, except the last eight lines thereof, he believes to be true. This affidavit and verification is made by said affiant for the reason that said facts and things are within the personal knowledge of affiant.

JOHN C. DOUGLASS.

Subscribed and sworn to before me this 19th day of October, 1875.
[SEAL.] A. S. THOMAS, *Clerk.*

Answer endorsed as follows, to wit:
This answer in the within-entitled action may be filed on or before Oct. 19th, 1875, not to interfere with the trial, if filed according to .
STILLINGS & FENLON,
Attys. for Plff.

No. 1374. Robert Barnes vs. The Board of County Commissioners of Leavenworth County. Answer. Filed Oct. 19, 1875. A. S. Thomas, clerk. L. M. Goddard & John C. Douglass, attys.

And on this day, to wit, October 27th, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his reply in said entitled cause; which said reply is in the words and figures following, to wit:

Reply.

UNITED STATES OF AMERICA.
District of Kansas:

In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES, PLFF.,
vs.
THE BOARD OF COUNTY COMMISSIONERS of the County of Leavenworth, deft. } Reply.

34

And now comes Robert A. Barnes, the plaintiff herein, and for reply to the answer of the defendant filed herein—

1st. Denies each, all, and every allegation and averment contained in the first, second, third, fourth, sixth, seventh, and eighth grounds of defense therein.

STILLINGS & FENLON,
Attys. for Plaintiff.

Reply endorsed as follows, to wit: No. 1374. Robert A. Barnes, plff., vs. The Board of County Commissioners of the County of Leavenworth. Reply. Filed Oct. 27, 1875. A. S. Thomas, clerk. Stillings & Fenlon, attys. for plff.

An on this day, to wit, Oct. 27, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his certain motion to strike out from answer in said entitled cause; which said motion is in the words and figures following, to wit:

Motion.

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES, PLFF.,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, deft.

35 And now comes Robert A. Barnes, the plaintiff herein, and moves the court to strike out from the answer of the defendant filed herein the fifth ground of defense therein, for the reason that the same contains no matter proper to be submitted to a jury.

STILLINGS & FENLON,
Attys. for Plaintiff.

Motion endorsed as follows, to wit: No. 1374. Robert A. Barnes, plff., vs. The Board of County Commissioners of the County of Leavenworth. Motion to strike out from answer. Filed Oct. 27, 1875. A. S. Thomas, clerk.

And on this day, to wit, November 29, 1875, the said plaintiff, by his attorneys, filed in the clerk's office of said court his demurrer to 5th ground of defense in said entitled cause; which demurrer is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States, district of Kansas.

ROBERT A. BARNES, PLFF.,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, deft.

And now comes the plaintiff and demurs to the fifth ground of defense set out in the petition because the same does not state facts sufficient to constitute a defense to this action, and because the same is not a proper subject of pleading and is mere surplusage.

By STILLINGS & FENLON, *his Attys.*

36 Demurrer endorsed as follows, to wit: No. 1374. Robert A. Barnes vs. The Board of County Commissioners of the County of Leavenworth. Demurrer to 5th ground of defense. Filed Nov. 29, 1875. A. S. Thomas, clerk.

And on this day, to wit, November 29, 1875, the said parties, by their attorneys, filed in the clerk's office of said court their stipulation waiving a jury in the said entitled cause; which stipulation is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States for the district of Kansas.

ROBERT A. BARNES
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County. } No. 150.

It is agreed and stipulated that a jury is waived in the above-entitled case.

STILLINGS & FENLON,
Attys. for Plff.
J. C. DOUGLASS,
L. M. GODDARD,
A. L. WILLIAMS,
Attys. for Deft.

Stipulation endorsed as follows, to wit: No. 1374. Robert A. Barnes vs. The Board of County Com'rs of Leavenworth. Stipulation waiving a jury. Filed Nov. 29, 1875. A. S. Thomas, clerk.

37 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the circuit court of the United States *of*r the district of Kansas, begun and held at Topeka, in said district, on Monday, November 22d, A. D. 1875—present, Hon. John F. Dillon and Hon. C. G. Foster, judges—at which term of said court the following proceedings, amongst others, were had and appear of record in the words and figures following, to wit:

Judgment.

ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, defendant. } 1374.

This cause came on to be heard on the motion of the plaintiff to strike out of the answer herein the fifth cause of defence set out therein, and thereupon, by leave of the court, the plaintiff filed a demurrer to said fifth ground of defense, which having been argued to the court by Messrs. Stillings & Fenlon, attorneys for plaintiff, and Messrs. L. M. Goddard and J. C. Douglas, attorneys for defendant, and the court being well advised in the premises, sustains said demurrer, to which decision of the court said defendant at the time excepts, and thereupon this cause came on for trial, and the parties, by their respective attorneys, by written stipulation filed with the clerk of this court, waived a jury and submitted this cause to the court on the allegations in the pleadings and proofs adduced on the trial thereof to the court; on consideration whereof,
the court being well advised in the premises, finds for the plaintiff,
38 and assesses his damages at $19,172.42, and at the request of the defendant, by its attorneys, finds the facts in this case and its conclusions of law as follows:

1. The plaintiff is the owner and holder of the bonds and coupons sued on, and purchased the same as stated in the petition for value & without actual notice of the defenses set up in the answer, or any of them.

2. The said coupons were originally attached to the bonds issued by the county in the following words:

'$1,000. No. 80.

"*Bond of the county of Leavenworth, State of Kansas.*

"On the first day of July, 1875, the county of Leavenworth, in the State of Kansas, will pay to the Leavenworth & Missouri Pacific Railroad Company or bearer, at the Metropolitan National Bank, in the city of New York, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum from and after the first day of September, 1865, payable semi-annually, on the first day of March and September, for which coupons are hereto attached; which bonds are receivable for all county dues.

"This bond is one of two hundred and fifty of like amount, issued in payment of the subscription of the said county of Leavenworth to the capital stock of the said Leavenworth & Missouri Pacific Railroad Company, under the provisions of the act of the legislature of the State of Kansas entitled 'An act to authorize counties and cities to issue bonds

to railroad companies,' approved February 10th, 1865, and for the payment of which the faith of the county is pledged.

"In testimony whereof the board of county commissioners of the said county has, this first day of July, A. D. 1865, caused this bond to be signed by the chairman of the said board, and countersigned by the county clerk of said county, and attested by the seal of the said county.

"C. N. PALMER, *Chairman.*

"Countersigned:

"A. GATES, *Clerk.*" [SEAL.]

(Across the face in red ink:) "July first, 1875."

39 "I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office, in accordance with an act of the legislature entitled 'An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith,' approved March 2d, 1872.

"Witness my hand and official seal this 27th day of June, 1872.

"A. THOMAN,

"*Auditor of State.*" [SEAL.]

On the 27th day of February. A. D. 1860, the legislature of the Territory of Kansas passed an act entitled "An act to incorporate the Missouri River Railroad Company," as found on page 406 of the private laws of 1860. Of the corporators named therein only one had any agency in procuring the passage of said act, or at the time knew of its existence, and the only acceptance of the said charter or organization ever attempted under it was by the following proceedings in 1865, of the record of which the following is a copy, to wit:

"A meeting of the corporators of the Missouri River Railroad Company was held, in accordance with the attached notice, at the office of Douglas & Stillings, in the city of Leavenworth, on Monday, Jan. 30, 1865.

"The following corporators were present in person or by proxy, viz: Jerm. Clark, James Davis, O. Baily, W. Y. Roberts, H. K. Stout, Samuel Dickson, John H. Foreman, Harvey W. Foreman, S. C. Pomeroy, John H. Day, Hugh Robertson, John McClepia, Wm. Noel, and L. C. Challis.

"A temporary organization was effected by electing Jeremiah Clark president, and James Davis secretary.

40 "On motion on James Davis, it was resolved that books for the subscription of the capital stock of $50,000, (fifty thousand dollars,) necessary to a permanent organization under the charter, be now opened.

"Wherefore the following persons subscribed to the capital stock the sums annexed to their names: Jerm. Clark, $1,000.00; James Davis, $1,000.00; John H. Day, 50.00; O. Baily, $50.00; F. Y. Roberts, 50.00; H. K. Stout, 50.00; Saml. Dickson, 50.00; John W. Foreman, 50.00; Harvey W. Foreman, 50.00; Saml. C. Pomeroy, 50.00; Hugh Robertson, 50.00; John McClepin, 50.00; Wm. Noel, 50.00; L. C. Challis, 50.00.

"On motion of James Davis, it was resolved that all persons present

Railroad Company, and to pay the same in such instalments as may be required by said company."

"APRIL 21ST, 1865.

"In compliance with the vote of the people and the orders of the county commissioners of Leavenworth County, issued on Tuesday, April 18th, 1865, the county of Leavenworth, State of Kansas, hereby subscribes to the capital stock of the Leavenworth and Missouri Pacific Railroad Co. the sum of two hundred and fifty thousand dollars of the bonds of the county, to be issued, payable as per contract with said railroad company. $250,000.00.

"C. N. PALMER,
"*Chairman of the Board Co. Comrs.*"

"On the same day (April 21, 1865) the board of directors of the Leavenworth & Missouri Pacific Railroad met, and on motion of
Resolved, That the stock subscribed to this company be now declared, due and payable, and the secretary is authorized to receive the same and receipt to parties for amounts paid, and to issue certificates of stock as soon as they can be executed.

"J. F. RICHARDS, *Sec'y.*"

44 Said meeting of January 30th, 1865, was called by John C. Douglass, by a notice published by him for two or three days in a newspaper published in Leavenworth City, in said county of Leavenworth. At said meeting only two of said corporators named in the act of February 27, 1860, were present, and three or four others of them had given their proxies to said Douglas, and at none of the said meetings of said corporators were any others of said corporators present than the two aforesaid, or any others by proxy than as aforesaid, and no others of said corporators than said two in person, & said three or four by proxy ever took any stock in said company. Said company never filed in the office of the secretary of state of the State or Territory of Kansas any map or plat of a location of a railroad, and it never located any railroad or built or owned any, or did any other acts to change its name or consolidate with any other railroad company than as above stated, and as hereinafter stated.

5. On the 20th day of February, A. D. 1865, articles of association were filed & recorded in the office of the secretary of the State of Kansas, of which the following is a copy, to wit:

"*Articles of association of the Missouri River Railroad Company.*

'The undersigned have formed an association for the purpose of constructing a railroad as hereinafter specified, and have adopted and assumed to themselves the name 'Missouri River Railroad Company.'

"The names and residence of the persons forming this association are as follows: A. M. Clark, G. J. Park, E. H. Marsh, John Wilson, W. C. Lobenstein, C. N. Palmer, John F. Richards, Charles S. Stettaner, James B. Lanig, and Josiah Kellog, all of the city and county of Leavenworth, Kansas.

"This company designs and is formed for the purpose of constructing a railroad commencing on the line between the State of Mis-
45 souri and the State of Kansas, at the terminus of the Missouri Pacific Railroad; thence along or near the Missouri River, to the city of Leavenworth; thence to Fort Leavenworth, Kansas.

"The capital stock of this company shall be two hundred thousand dollars.

"Witness our hands this seventeenth day of February, A. D. 1865.

"A. M. CLARK.
"JOHN WILSON.
"G. J. PARK.
"W. C. LOBENSTEIN.
"E. H. MARSH.
"C. N. PALMER.
"JOHN F. RICHARDS.
"JAMES B. LANIG.
"C. S. STETTANER.
"JOSIAH KELLOG.

"STATE OF KANSAS,
"*County of Leavenworth:*

"Be it remembered that on this 17th day of February, A. D. 1865, before the undersigned, a notary public within and for the county and State aforesaid, personally came A. M. Clark, G. J. Park, E. H. Marsh, John Wilson, W. C. Lobenstein, C. N. Palmer, J. F. Richards, and James B. Lanig, and Charles S. Stettauer, Josiah Kellog, who are personally known to me to be the identical persons whose names are affixed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their own act and deed.

"In testimony whereof I have hereunto set my hand and affixed my official seal at office in Leavenworth City this 17th day of February, 1865.

"WM. McNEIL CLOUGH,
"*Notary Public.*

"STATE OF KANSAS,
"*County of Leavenworth, ss:*

"John Wilson, James B. Lanig, & John F. Richards, members of the above and foregoing association and company, being first duly sworn, depose and say, that the foregoing statements, for the purpose of the association and incorporation of the Missouri River Railroad Company, are true, and that the objects and purposes of said company are truly set forth in the above statements.

"Sworn to before me and subscribed in my presence by the said John Wilson, James B. Lanig, & John F. Richards.

("Signed) JOHN WILSON.
"JAMES B. LANIG.
"JOHN F. RICHARDS.

"This 17th day of February, A. D. 1865.

"WM. McNEIL CLOUGH,
"*Notary Public.*"

46 6th. On the 30th day of May, 1865, the following was filed & recorded in the office of the secretary of state of Kansas, to wit:

"The board of directors of the Missouri River Railroad Company, a corporation created and organized under and by virtue of the act of the legislature of the State of Kansas, entitled 'An act to provide for the incorporation and regulation of railroad companies,' approved February, 1865, hereby certify that, in the opinion of this board of directors, said railroad company requires an increased amount of the capital stock, and that said board of directors has been duly authorized by the holders of a majority of the capital stock of the said company to increase the said capital stock in the sum and amount of one million dollars,

and that the said board of directors, at a meeting thereof, held at the office of the railroad company in the city of Leavenworth, Kansas, on the 23d day of May, 1865, duly authorized and directed an increase of the capital stock of said company in the sum of one million of dollars, and further certify that the capital stock of said company shall, from this day, be the sum of one million two hundred thousand dollars.

"In testimony whereof we, L. T. Smith, president, and J. F. Richards, the secretary of the said company, have hereunto set our hands and affixed our private seals (the said company having no seal) this 25th day of May, 1865.

"L. T. SMITH, *President.* [SEAL.]
"JOHN F. RICHARDS, *Secretary.* [SEAL.]

"STATE OF KANSAS,
"*Leavenworth County, ss:*

"Be it remembered that on this 25th day of May, A. D. 1865, before me, the undersigned, a notary public in and for the county and State aforesaid, came L. T. Smith, who is to me known to be the president, and J. F. Richards, who is to me known to be the secretary, of the Missouri River Railroad Company, and whose names are severally
47 affixed to the written instrument of writing as such president and secretary, and acknowledged the same to be their own voluntary act and deed, for the uses and purposes *and purposes* therein expressed.

"Witness my hand and official seal the day and year last above written.

"T. A. HURD,
"*Notary Public.*"

[Revenue stamp.]

The records of the proceedings of said Missouri River Railroad Company contain the following, to wit:

"Books for the subscription of stock to the Missouri River Railroad Company," opened at the City Engineer's office, in Leavenworth, Kansas, on Thursday, April 6, A. D. 1865.

"We, the subscribers, agree to take the number of shares opposite our names in said R. R. Company.

Date.	Subscribers' names.	Amt. paid.	No. shares.	Amt. subs'd.
April 6.	A. Macauley	$46 00	23	$2,300
"	Henry Foote	40 00	20	2,000
"	D. R. Anthony	40 00	20	2,000
"	Wilson, Brace & Co	40 00	20	2,000
"	Eddy & Arnold	40 00	20	2,000
"	W. C. Lobenstein	40 00	20	2,000
"	Thos. C. Stevens	100 00	50	5,000
"	Thomas Cabney	100 00	50	5,000
"	L. T. Smith	100 00	50	5,000
"	Wm. B. Borland	10 00	5	500
"	Chas. S. Stettauer	50 00	25	2,500
"	John F. Richards	20 00	10	1,000
7th.	James Davis	20 00	10	1,000
	Q. C. Stone	40 00	20	2,000
	A. Caldwell	40 00	20	2,000
	E. M. Marsh	20 00	10	1,000
	John C. Douglas	20 00	10	1,000
	James McGrew	2 00	1	100
48	E. H. Gruber	100 00	50	5,000
	Lucien Scott	100 00	50	5,000
	C. Glick	2 00	1	100

The above and foregoing stock having been subscribed, said stockholders thereupon met on the 8th day of May, 1865, and elected the following board of directors, to wit, L. T. Smith, T. C. Stevens, E. H. Gruber, John F. Richards, C. B. Brace, J.C. Stone, A. Macauley, C. S. Stettauer, Charles Glick, Lucien Scott, E. H. Marsh; and on same the said board elected the following officers, to wit: L. T. Smith, president; E. H. Gruber, treasurer; Thos. C. Stevens, vice-president; John F. Richards, secretary.

7th. The following resolution appears on the records of the Missouri River Railroad Company of date July 13, 1865:

"Resolved, that this board of directors consent to the agreement of consolidation with the Leavenworth and Missouri Pacific Railroad Company this day presented to this board, and the said agreement, as now written and spread upon the minutes of this company, is the agreement of this board for such consolidation, and the president and secretary are hereby directed to execute the said agreement in duplicate as this act of this company."

The foregoing is all the records of said company in regard to consolidation with the L. & M. R. R. R. Co., or any other railroad company, except the following, unsigned in a loose sheet, in the record book of the organization under the act of Feb'y 27, 1860, to wit:

"Resolved, that this board of directors consent to the agreement of consolidation with the Leavenworth and Missouri Pacific Railroad Company this day presented to this board, and the said agreement, as now written and spread upon the minutes of this company, is the
49 agreement of this board for such consolidation; and the president and secretary are hereby directed to execute the said agreement in duplicate, as the act of this board of directors and company."

8th. On the 30th day of December, A. D. 1864, a meeting of some of the citizens of Leavenworth City, in the county of Leavenworth, State of Kansas, was held in said city, and the following is the record, in duplicate, of its proceedings, to wit:

A resolution to request the board of county commissioners to call an election to vote on issueing $500,000 for the construction of a railroad from Leavenworth to Kansas City to connect with the Missouri Pacific R. R.

Adjourned to Jan. 4, 1865; at which time the meeting again was held, & a report read that the county board had called an election for the purpose for January 21st, 1865. Following this was the call of the defendant for the election of Jan. 21, 1865, to vote on said question by the voters of the defendant county.

9th. On the 2nd day of January, A. D. 1865, the defendant passed & entered of record the resolution following, to wit:

"Resolved by the board, that an election is to be held on Saturday, the 21st day of January, and the question of issueing $500,000 in bonds of Leavenworth County, (or so much as needed,) payable in twenty years from date, be'ing interest not exceeding seven per centum per annum, payable semi-annually, to be expended in stock of the Leavenworth & Missouri Pacific Railroad, be submitted to the legal voters of the county. All ballots cast having written or printed on them 'For issueing $500,000 in bonds' shall be in favor of authorizing the issuance of said bonds, to be expended as aforesaid, and all ballots cast having written or printed on them 'Against issueing $500,000 in bonds' shall be against authorizing the issuance of said bonds. The votes cast
50 at said elections on the question aforesaid shall be counted, re

turned, and canvassed as provided by law. But nothing in this resolution contained shall operate to create any liability on the part of the county in favor of said railroad without the further action and assent of the board of county commissioners, the object of this resolution being simply to ascertain the sense of the qualified electors of the county upon the question proposed."

10th. Subsequently to the said order of Jan. 2d, 1865, the following proceedings were had by the board of county commissioners of the county of Leavenworth as shown by its record, to wit:

"WEDNESDAY, *January* 25, 1865.

"The board met, pursuant to adjournment, at 10 o'clock a. m.

"Present: C. N. Palmer, G. W. Baird, & Thos. Kincaid.

"The board then proceeded to canvass the several poll-books & returns of an election held January 21st, of which the following is the result:

	"For issueing $500,000.	Against issueing $500,000.
"1st ward	244	None.
"2nd ward	196	1
"3rd ward	147	6
"4' ward	166	4
"Easton Tp	6	25
"Alexandria Township:		
"Springfield precinct	6	17
"Stranger Tp	5	5
"Delaware Tp	4	52
"Steuben City precinct	10	1
"Total	784 for, etc.	111 against.

11th.

"TUESDAY, *April* 18*th*, 1865.

"Resolved, That the chairman of the board of county commis-
51 sioners for Leavenworth County is hereby directed to subscribe to the capital stock of the Leavenworth and Missouri Pacific Railroad Company, to aid in the construction of a railroad from the city of Leavenworth to connect with the Missouri Pacific R. R. at or near Kansas City, Mo., the sum of two hundred and fifty thousand dollars in bonds, bearing interest at the rate of seven per cent. per annum, payable semi-annually, and having twenty years to run to maturity; said bonds to be issued to said railroad company in installments from time to time the same as the stockholders are called upon and as the road progresses to completion; and said railroad co. guarantees that said road shall be completed and put into operation within one year from the first day of October, A. D. 1865; & the chairman of said board shall enter into and make *in* contract in conformity with this resolution."

12th. On the 1st day of July, 1865, the bonds & coupons in suit, pursuant to said order of the board of county commissioners of said county of the 18th day of April, 1865, signed by C. N. Palmer, chairman, & countersigned by A. Gates, county clerk of said county, & attested by the seal of said county, and by said chairman delivered to L. T. Smith, as president as aforesaid of said company, claiming as aforesaid to be

the Leavenworth and Missouri Pacific R. R. Co.; said Smith is the same Smith elected president under both the aforesaid organizations or companies.

13th. Said bonds and coupons were disposed of by the company, who received them as aforesaid, and were purchased by said plaintiff for value, as averred in the plaintiff's petition, and without actual notice of any defense, and he is the owner of the same in good faith.

14th. The defendant county levied and collected taxes as fol-
52 lows, to wit:

1866.	A general levy for interest on bonds	5	mills.
	And for sinking-fund	6	mills.
1867.	Levy for interest on bonds issued to the Leavenworth & Mo. Pacific R. R. Co	2	mills.
	For int. on bonds issued to the Platte City and Fort Des Moines R. R. Co	2½	mills.
	For interest on bonds of the first issue	½	mill.
1868.	Levy for interest on bonds issued to the Missouri River R. R. Co	2	mills.
	Old 10 p. c. bonds	½	mills.
	Platte City & Ft. Des Moines R. R. Co	2 3/10	mills.
	Union Pacific R. R	3	mills.
1869.	Levy for interest on Mo. River R. R. bonds	2	mills.
	Union Pacific Railroad, E. D	3	"
	Old 10 p. c. bonds	½	mill.
1870.	Levy of 11 mills for sinking-funds.		
1871.	Levy for interest on bonds issued to the Missouri River R. R. Co	1¾	mills.
	Kansas Pacific Railway	1	mill.
	Platte City & Ft. Des Moines Railway Co	2	"
1872.	Levy for interest on bonds issued to the Missouri R. R. R. Co	½	mills.
	Platte City & Ft. Des Moines Railway	1⅝	
1873.	Levy under the law of 1872 for interest on bonds issued to the Missouri R. R. Co	7/10	mills.
	Interest on bonds issued to the Union Pacific Railway.	8/10	mills.
	Platte City & Fort Des Moines Railway	4/10	"

The said levies in 1871 & 1872 & 1873 were levied under the laws of the State of Kansas passed respectively 1871. (Laws 1871, page 326; laws 1872, p. 290.) Said two acts are as follows, to wit:

"CHAPTER CXLVIII.—*Leavenworth County taxation.*

"An act relating to taxation in the county of Leavenworth.

"Be it enacted by the legislature of the State of Kansas:

53 "SECTION 1. The county commmissioners of Leavenworth County are hereby authorized to levy upon the taxable property of said county for the year 1871, and succeeding years, the following taxes and no more, to wit: For general purposes, five (5) mills; for county *county* bridges, one (1) mill; for poor-tax, one and one-fourth (1¼) mills; for interest on bonds issued to the Kansas Pacific Railway Company, one (1) mill; for interest on bonds issued to the Missouri River Railroad Company, one and three-fourths (1¾)

repairs, road expenses and damages, one mill; for poor, one mill; for interest on bonds issued to the Kansas Pacific Railway Company, one mill; for payment of interest on bonds issued to redeem county warrants, three quarters of one mill; and such sum as is necessary to
57 pay interest on court-house bonds not exceeding one and one-quarter mills.

"SEC. 2. Section one of the act to which this is amendatory is hereby repealed.

"SEC. 3. This act shall take effect and be in force from and after its publication in the Leavenworth Daily Times.

"Approved March 3, 1874.

"I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office, and that the same was published in the Leavenworth Daily Times, March 5, 1874.

"W. H. SMALLWOOD,
"*Secretary of State.*"

17th. In 1865 the said defendant also issued bonds in aid of the Union Railway Co., since known as the Kansas Pacific Railway Co., and also in aid of the Platte City and Ft. Des Moines R. R. Co., and which bonds are not yet matured.

18th. The act of the legislature of the State of Kansas, chapter 12 of the laws of 1865, page 41, mentioned on the face of the bonds in suit, was published in the statute-book on the 19th day of June, 1865, and on the 14th day of February, 1865, it was published by the secretary of state in the Leavenworth Daily Conservative, but the said publications did not contain the signatures of the presiding officers of either house of the legislature, and said publications had appended thereto a certificate of the secretary of state that said act as published was a true and correct copy of the original bill on file in his office; such were the only publications of said act.

19th. The act of the legislature of 1865, chapter 44, p. 94, of the laws of 1865, authorizing the formation of railroad corporations, was published in the statute-book on the 19th day of June, 1865, and on the 22 day of February, A. D. 1865, it was published by the secretary of state in the Topeka State Record, but from said publication were omitted the signatures of the presiding officers of the two houses of the leg-
58 islature, and said publications had appended thereto a certificate of the secretary of state certifying that said act as published was a true and correct copy of the original enrolled bill on file in his office; such were the only publications of said act.

20th. The two acts of the legislature of the State of Kansas, chapters 32 & 33 of the private laws of 1868, pp. 69 & 70, in relation to the sale of the stock & hereinafter referred to, were published in the statute-book on the 27th day of December, A. D. 1868, and on the 6th day of March, 1868, the former act was published by the secretary of state in the Kansas State Journal, at Lawrence, Douglas Co., Kansas, and the latter act was, on the 18th day of March, 1868, published in the Kansas Daily Tribune, at Lawrence aforesaid, and from each of said publications were omitted the signatures of the governor of the State & the presiding officers of the two houses of the said legislature, and each said publication had appended thereto a certificate of the secretary of state that the act as published was a true and correct copy of the original enrolled bill on file in his office; such were the only publications of said act.

21st. In July, 1866, the Missouri River Railroad, from the State line

between the States of Missouri & Kansas to the city of Leavenworth, was completed, & has been in operation ever since; its location was commenced in October, 1865, and this is the only railroad ever located or built in said county & between said points, and it was located and built by the company or companies organized & acting under the acts & organizations hereinbefore found & stated, & not otherwise. No proceedings in quo warranto or otherwise has ever been instituted by the State or under its authority to question the corporate rights or character of the said company or companies.

22d. On the 20th day of December, A. D. 1865, L. T. Smith
59 and E. H. Gruber, as president & treasurer, respectively, of the Missouri River Railroad Company, executed and delivered to said defendant a certificate of stock for twenty-five hundred shares of said company's capital stock, in consideration of payment for the $250,000 of bonds issued by defendant on the 1st day of July, 1865, to the Leavenworth and Missouri Pacific Railroad Company, and of which the bonds in suit are a part, and said defendant never owned any stock other than the above 2,500 shares, either in the above-named Missouri River Railroad Company or the Missouri River Railroad Company under the charter of Febr. 27, 1860, or in the said Leavenworth & Missouri Pacific Railroad Company. Said certificate of stock is as follows:

[" 25c. rev. stamp. Cancelled by L. T. S., Dec. 20th, 1865.]

" Shares $100 each. Chartered in 1865.

" MISSOURI RIVER RAILROAD COMPANY.

" Number one. STATE OF KANSAS. 2,500 shares.

" This is to certify that the county of Leavenworth, State of Kansas, is entitled to twenty-five hundred shares of the capital stock of the Missouri River Railroad Company, transferable only on the books of the company by the county of Leavenworth, or its attorney, upon the surrender of this certificate.

" In testimony whereof the said company have caused this certificate to be signed by their president and treasurer.

" Leavenworth, December 20th, 1865.

" E. H. GRUBER,
" *Treasurer.*
" LEONARD T. SMITH,
" *President.*"

" Know all men by these presents that do hereby appoint attorney irrevocable for to sell and transfer to the whole or any part of the within-named shares, with power one or more attorneys under to appoint for that purpose.

" Witness hand and seal this day of , 186 .

" In presence of ."

60 On the back of said certificate of stock is the following assignment made by authority of the defendant:

" For value received, the county of Leavenworth do hereby transfer to the Leavenworth, Atchison and Northwestern Railroad Company the twenty-five hundred shares of stock named in the within certificate.

" Witness, this 4th day of Jany., 1869, my hand & seal.

" THE COUNTY OF LEAVENWORTH,
" By THOMAS P. FENLON,
" *County Attorney & Agent.*"

23rd. On the 19th day of December, A. D. 1868, the defendant submitted to a vote of the qualified electors of said county a proposition of the Leavenworth, Atchison and Northwestern Railroad Company to build a certain railroad, in consideration of the assignment by the said defendant of its stock in the Missouri River Railroad Company. The votes cast at said election were afterwards canvassed by the defendant, and it was declared by the defendant as the result of said canvass that the majority of the votes cast at said election were in favor of said proposition being accepted, and thereupon, on the fourth day of January, 1869, the defendant, in pursuance of said vote and for the consideration aforesaid, assigned and transferred its aforesaid certificate of stock in the said Missouri River Railroad Company to the Leavenworth, Atchison and Northwestern Railroad Company.

24th. The said proposition of the Leavenworth, Atchison and Northwestern Railroad Company was submitted, as aforesaid, to a vote of said electors, only by the separate order of the defendant and not by the joint order of the defendant and the mayor and council of said city of Leavenworth, and said assignment and transfer of said certificate on the 4th day of January was executed & done by the defendant alone & not by the defendant and the said mayor & council of said city.

61 25th. On the 29th day of February, 1868, the legislature of Kansas passed the following act in relation to the sale of defendant's said stock: ,

"CHAPTER 32.—*Railroads, Leavenworth County.*

"An act to authorize Leavenworth County and the city of Leavenworth to dispose of stocks in railroad corporations.

"Be it enacted by the legislature of the State of Kansas:

"SECTION 1. The Board of Commissioners of Leavenworth County and the Mayor and Council of Leavenworth City are hereby authorized and empowered to sell or dispose of any stock which said county or city may own in any railroad company, under such conditions and terms as to said Board of County Commissioners and Mayor and City Council shall seem to the interest of the county and city: Provided, That the said Board of County Commissioners and the said Mayor and Council of Leavenworth City shall first have caused to be submitted to the people of the county and city the question whether or not the said Board of County Commissioners and the Mayor and Council shall have the authority to sell and dispose of such railroad stock held by them respectively.

"SEC. 2. The said board of County Commissioners and Mayor and Council are hereby authorized to submit the said question to the people of said county and city, and shall prescribe the form in which the ballots upon the proposition shall be cast, the time at which the election shall be held, which said election shall be conducted in all respects according to the provisions of the existing election laws.

"SEC. 3. This act shall be in force from and after its publication in the Kansas State Journal.

"Approved February 29, 1868.

"I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office, and that the same was published in the Kansas State Journal March 6, 1868.

"R. A. BARKER,
"*Secretary of State.*"

62 26th. On the 3rd day of March, 1868, the legislature of Kansas passed the following act in relation to the sale of the defendant's stock:

"CHAPTER 33.—*Railroads, Leavenworth County.*

"An act supplemental to an act entitled 'An act to authorize Leavenworth County and the City of Leavenworth to dispose of stock in railroad companies,' approved February 29, 1868.

"Be it enacted by the legislature of the State of Kansas:

"SECTION 1. That the provisions of an act entitled 'An act to authorize Leavenworth County and the City of Leavenworth to dispose of stock in railroad companies,' approved February 29, 1868, which requires that the action of the County Commissioners of the County of Leavenworth, and of the City Council of the City of Leavenworth, in disposing of the railroad stock held by said county and city, respectively, shall be submitted to the voters of said county and of said city, be, and the same is hereby, so modified that the County Commissioners of Leavenworth County and the City Council of the City of Leavenworth may dispose of or use said stock in the building of bridges, or in aid of the building of bridges, over any river or stream, so as to connect and unite railroads leading to and from the city of Leavenworth, and the county of Leavenworth and the city of Leavenworth may own such bridge or bridges, or an interest in such bridge or bridges, as the County Commissioners and the City Council, respectively, may provide for by contract.

"SEC. 2. The power is hereby given to said County Commissioners and City Council, respectively, to dispose of such bridge or bridges, or such interest as the county or city may require therein, upon such terms and conditions as the said County Commissioners and the said City Council may deem expedient and for the best interest of the county and city.

"SEC. 3. This act shall take effect and be in force from and after its publication in the Kansas Daily Tribune.

"Approved March 3, 1868.

63 "I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office, and that the same was published in the Kansas Daily Tribune March 18, 1868.

"R. A. BARKER,
"*Secretary of State.*"

27th. The taxes levied as aforesaid for the Leavenworth & Mo. Pacific Railroad, & for the Mo. River *River* Railroad, were intended for the benefit of one & the same issue of bonds, of which the bonds in suit are part, & were paid hereon.

Conclusions of law.

From the foregoing facts the court finds, as conclusions of law—

1st. That the plaintiff is entitled to recover on the bonds & coupons in suit.

2. That the said facts constitute no defence to the said action.

To which last finding the defendant duly excepted.

JOHN F. DILLON, *Judge.*

It is therefore considered, ordered, and adjudged that said Robert A. Barnes, plaintiff herein, have and recover of and from the Board of County Commissioners of the County of Leavenworth, defendant herein, the sum of $19,172.42, (nineteen thousand one hundred and seventy-two dollars and forty-two cents,) and his costs herein expended, taxed at $; and that this judgment bear interest from Nov. 29, 1875, being the day on which the assessment of damages were made.

And on this day, to wit, December 7th, A. D. 1875, the defendant, by its attorneys, filed in the clerk's office of said court its bill of exceptions in said entitled cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States, district of Kansas.

64 ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, deft. } Bill of exceptions.

Be it remembered that at the Nov. term of said court, on the 29th day of Nov., 1875, on the trial of said cause, the plaintiff, to maintain the issues on his part, offered in evidence, from the records of the defendant, the levy of taxes in 1866, for the payment of interest on the bonds of the county, and also the levy of taxes in 1867 for the payment of interest on the bonds of the county issued to the Leavenworth & Missouri Pacific R. R. Co., and for payment of interest on bonds issued to the Kansas Pacific Railway Co., and for the payment of interest on bonds issued to the Platte City and Ft. Des Moines R. R. Co.; and also the levy of taxes in 1868 & 1869 for payment of interest on bonds issued to the Missouri River Railroad Company, and on bonds issued to the Kansas Pacific Railway Company, and on bonds issued to the Platte City & Fort Des Moines Railroad Company; and also the levy of taxes in 1871, in pursuance of the law of the State of Kansas, page 326 of the Laws of 1871, for the payment of interest on the bonds of the county issued to the Missouri River Railroad Company, and on bonds issued to the Kansas Pacific Railroad Company, & on bonds issued to the Platte City & Fort Des Moines R. R. Co.; and also the levy of taxes in 1872 & 1873, in pursuance of the law of 1872, found on page 290 of the Laws of Kansas of 1872, for payment of interest on
65 bonds issued to the same three railroads named in the said law of 1871; and then, to prove that the bonds provided for by these several levies and these said two laws of the State of Kansas of 1871 and 1872, as bonds issued to the Missouri River Railroad Company, were the same bonds of which the bonds in suit are a part. The plaintiff offered parol testimony, aliunde the said records of the county and the said two statutes of 1871 & 1872, to wit, the oral testimony of witnesses that out of the taxes so levied as aforesaid to pay the interest on the bonds issued to the Missouri River Railroad Company had been paid in each said year the interest on the bonds of which the bonds in suit are part, & oral testimony of witnesses that, in 1865, the defendant

county had issued bonds to the Kansas Pacific Railway Company, & in 1866 to the Platte City & Fort Des Moines R. R. Co., which last-mentioned bonds are not yet matured; and testimony that said county defendant had never issued railway bonds except to the three (3) railway companies hereinbefore named. To all & singular said testimony defendant objected, for the reason that it is incompetent, irrelevant, & immaterial, but the court overruled the objection and admitted the testimony in evidence, to which decision of the court defendant at the time excepted, and prayed that this its bill of exceptions be allowed & made part of the record, which is accordingly done.

JOHN F. DILLON,
Circuit Judge.

(Endorsed as follows, to wit:) "No. 1374. Robt. A. Barnes vs. The B'd of Co. Com. of the Co. of Leav'th. Bill of exceptions. Filed Dec. 7, 1875. A. S. Thomas, clerk. Goddard & Douglass, attys."

66 And on this day, to wit, Tuesday, December 7th, 1875, in the November term, A. D. 1875, of said court, in the record of the proceedings thereof in the said entitled action is the following entry, to wit:

Journal entry.

ROBERT A. BARNES, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, defendants. } 1374.

Now comes the defendant, by its attorneys, and presents to the court its bill of exceptions herein, which is allowed, filed, and made a part of the record in this action.

67 Know all men by these presents that we, D. W. Houston and B. S. Richards, both of the city & county of Leavenworth, State of Kansas, are held and firmly bound unto Robert H. Barnes in the full and just sum of two hundred dollars, to be paid to the said Robert H. Barnes, his certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents, sealed with our seals and dated this 27th day of April, A. D. 1876.

Whereas the said The Board of County Commissioners of the County of Leavenworth, State of Kansas, hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered against it in the circuit court of the United States for the district of Kansas, at the November term, A. D. 1875, in favor of said Robert H. Barnes:

Now, therefore, the condition of this obligation is such, that if the said The Board of County Commissioners of the County of Leavenworth, State of Kansas, shall prosecute its said writ of error to effect, and answer all costs if it fail to make its plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

D. W. HOUSTON.
B. S. RICHARDS.

Approved May 2, 1876.

JOHN F. DILLON,
Judge.

(Endorsed:) Bond for costs. Filed May 11, 1876. A. S. Thomas, clerk.

68

69 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings in the action of Robert H. Barnes vs. The Board of County Commissioners of the County of Leavenworth, No. 1374, in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 12th day of January, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

70

71 Supreme Court of the United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, plaintiff in error,
vs.
ROBERT A. BARNES, DEF'T IN ERROR.

Of October term, in the year of our Lord one thousand eight hundred & seventy-six.

Afterwards, to wit, on the first Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Board of County Commissioners of the County of Leavenworth, by L. M. Goddard & John C. Douglass, its attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

First. That the facts set forth in the said petition are not sufficient in law to maintain the aforesaid action thereof against the said Board of County Commissioners of the County of Leavenworth, and the said circuit court erred in overruling the motion of defendant to exclude all evidence under said petition.

72 Second. That the said circuit court erred in sustaining the demurrer of the plaintiff to the fifth ground of defense set forth in the defendant's answer.

Third. That the said circuit court erred in admitting the evidence of the said plaintiff in said circuit court, and objected to by said defendant in said court, as set forth in said defendant's bill of exceptions, which is a part of said record.

Fourth. That the said circuit court erred in its conclusions of law, and each of them, from the findings of fact as set forth in said record.

Fifth. That the said judgment was given for the said Robert A. Barnes, when it ought to have been given for the said Board of County Commissioners of the County of Leavenworth, according to the law of the land.

73

74 And the said Board of County Commissioners of the County of Leavenworth prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that it may be restored to all things which it hath lost by occasion of said judgment.

L. M. GODDARD & JOHN C. DOUGLASS,
Attys. for said Pltff. in Error.

(Indorsed:) Assignment of errors. Filed May 11, 1876. A. S. Thomas, clerk.

75 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Robert A. Barnes, plaintiff, against the Board of County Commissioners of the County of Leavenworth, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this 7th day of December, A. D. 1875.

[SEAL.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States,
for the District of Kansas.

Allowed by—

JOHN F. DILLON,
Judge.

76 Indorsed: No. . vs. . Writ of error.
Filed May 11, 1876. A. S. Thomas, clerk.

77 The United States of America to Robert H. Barnes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein The Board of County Commissioners of the County of Leavenworth, State of Kansas, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. M. R. Waite, Chief-Justice U. S. Supreme Court, this 2d day of May, 1876.

JOHN F. DILLON, *Judge.*

Service of the above paper is hereby acknowledged.

STILLINGS & PARKER,
Att'ys f' Barns.

(Indorsed:) Citation. Filed May 11, 1876. A. S. Thomas, clerk.

(Indorsement on cover:) No. 662. The Board of County Commissioners of the County of Leavenworth, plaintiff in error, vs. Robert A. Barnes. Kansas C. C. U. S. Filed 14th July, 1876.

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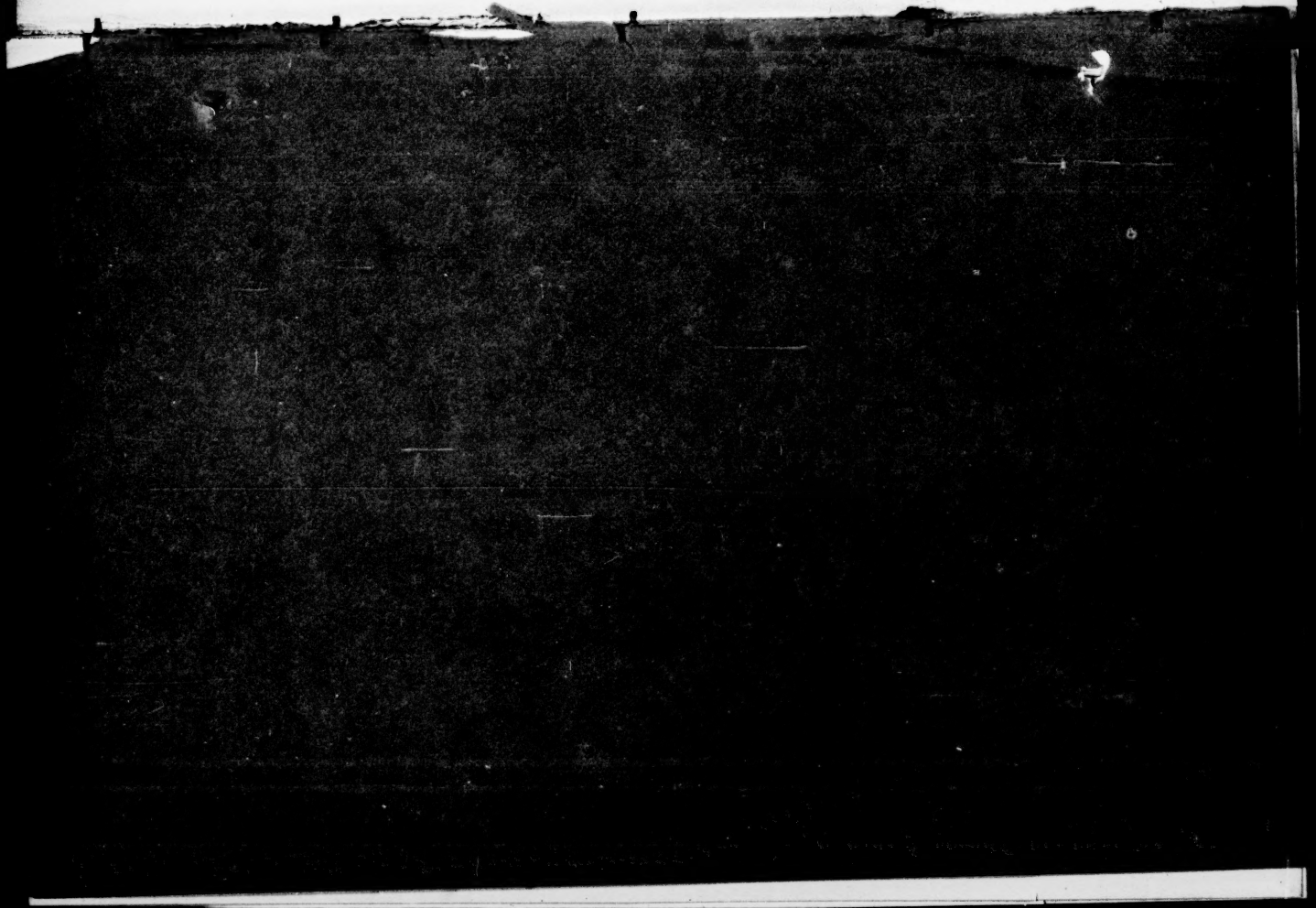

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1876.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LEAVENWORTH,
Plaintiff in Error,

versus

ROBERT A. BARNES, *Defendant in Error.*

Error to the Circuit Court of the United States, District of Kansas.

J. W. ENGLISH,
L. M. GODDARD AND
JOHN C. DOUGLASS,
Attorneys for Plaintiff in Error.

KETCHESON & DURFEE, Leavenworth, Kansas.

the rate of seven per cent. per annum from and after the first day of September, payable semi-annually on the first days of March and September, for which coupons are hereto attached, which coupons are receivable for all county dues.

This bond is one of two hundred and fifty of like amount issued in payment of the subscription of the said county of Leavenworth to the *capital stock* of the *Leavenworth & Missouri Pacific Railroad Company*, under the provisions of the act of legislature of the State of Kansas entitled, "An act to authorize counties and cities to issue bonds to railroad companies," approved *February 10th*, 1865, and for the payment of which the faith of the county is pledged.

In testimony whereof the board of county commissioners of the said county has this first day of July, A. D. 1865, caused this bond to be signed by the chairman of the said board, and countersigned by the county clerk of said county, and attested by the seal of the said county.

C. N. PALMER.

Countersigned:
[SEAL] A. GATES, *Clerk*.

$23.33. *Coupons*. 20.

On the first day of July, 1875, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank in the city of New York twenty-three dollars and twenty three cents, being interest on bond No. 21, *issued to the Leavenworth and Missouri Pacific Railroad Company*.

C. N. PALMER,
Chairman.

$35.00.

On the first day of March, 1875. the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 27, issued to the Leavenworth & Missouri Pacific Railroad Company.

C. N. PALMER,
Chairman.

$35.00 18.

On the first day of September, 1874, the county of Leavenworth will pay to the bearer, at the Metropolitan Bank of New York, thirty-five dollars, being interest on bond No. 21, issued to the Leavenworth and Missouri Pacific Railroad Company.

C. N. PALMER,
Chairman.

Plaintiff averred that he became the owner for value on 1st day of July, 1866, and that in pursuance of law the interest coupons had all been paid, except those sued on, and that the said *Leavenworth & Missouri Pacific R. R. Co.* was a *corporation* duly organized *under the laws* of the State of Kansas, on and ever since February 10, 1865.

Defendants answered by general denial, except as to the signatures of the parties signing the bonds, and then set up several special defences, to wit:

1st. No existing Railroad Corporation the grantee of the bonds.

2nd. No location of railroad into the county.

3rd. No consideration.

4th. No Legislative authority for the issue.

5th. No previous legal election or vote.

6th. Notice to purchaser.

7th. Bonds not issued in payment of assessments upon all the stock.

Thereupon Plaintiff joined issue, and the parties, by written stipulation, *waived a jury trial*, and at the *November Term*, 1875, the *issues of fact* in the case were tried *by the Court*, and findings of fact, and conclusions of law were separately found by the Court, and judgment given for plaintiff, in which judgment and as part thereof was a recital of the waiver of a jury and the trial of the issues of fact by the Court. See printed record, middle of p. 16

FIRST QUESTION.

The first question here raised is upon the *powers* of the *Court* to *try said issues of fact.*

The following is the law of February 10th, 1865, recited in said bond, and under which Plaintiff claimed that the bonds were issued, to wit:

SEC. 1. The board of county commissioners of any county into which ——— ——— — any railroad is or may be located, may subscribe to the capital stock of any such railroad corpora-

tion in the name and for the benefit of said county, not exceeding three hundred thousand dollars in any one corporation, and may issue the bonds of such county in such amounts as they may deem best, in payment for said stock; *Provided*, that such bonds shall be issued only in payment of assessments made upon all the stocks of the such railroad company, which bonds shall bear interest at a rate not exceeding seven. per cent per annum, and shall be payable within thirty years, ——— ——— —; and said board of commissioners shall annually levy and collect, at the same time and in the same manner that general taxes are levied and collected, a tax sufficient to pay the annual interest on such bonds, and to create a sinking fund for their redemption. But no such bonds shall be issued until the question shall be first submitted to a vote of the qualified electors of the county at some general election, or at some special election to be called by the board of county commissioners by first giving twenty days notice in some newspaper published and having general circulation in the county, ——— ——— and, in submitting said question, said board of Commissioners shall direct in what manner the ballots shall be cast. If a majority of the votes cast at such election shall be in favor of issuing such bonds, the board of commissioners of the county shall issue the same.

SEC. 2. Said bonds, when issued, shall be in such form, and shall be numbered and registered in such manner as the board of commissioners shall determine.

* * * * * * *

SEC. 4. In case the board of commissioners of any such county have heretofore submitted to the electors of such county the question of issuing bonds to any railroad company, and at such election such electors voted to issue such bonds, such board are hereby authorized to issue such bonds, and subscribe for stocks not exceeding the amount as provided in the first section of this act, as provided in the first Section of this act.

This act was published February 14th, 1865.

The Constitution of Kansas provides:

ARTICLE II.

SEC. 10. "Each House shall keep and publish a journal of its proceedings. The yeas and nays shall be taken and entered immediately on the journal upon the final passage of every bill or jount resolution, * *.".

SEC. 13. "A majority of all the members elected to each House voting in the affimative, shall be necessary to pass any bill or joint resolution"

SEC 14. Every bill and joint resolution passed by the House of Represutatives and Senate, shall within two days thereafter, be signed by the presiding officers and presented to the Governor, * * *."

And the journal of the Legislature shows the following as its proceedings on the passage of this law, to wit:

It was a Senate bill, and, on its 3rd reading in the Senate, the yeas and nays were c lled and entered on the journal. It then went the House and was there in like manner passed, *with some House amendments*, and was then returned to the Senate for its concurrence in the bill as amended, thereupon a Senator moved *to concur in the House amendments*."

"*Which motion prevailed.*"

This is the entire journal entry. The yeas and nays were not called, nor does it appear that even a majority of the members voted for it.

This bill was then enrolled and attested by the clerks, and signed by the Speaker of the House, but was *never signed by the President of the Senate.*

It was afterwards approved by the Governor and filed with the other enrolled bills in the office of Secretary of State, and published as a l w. Hence arises the

SECOND QUESTION.

The county claiming that this pretended law was and is a nullity, because, first, *the yeas and nays were not called or entered on the journal on its "final passage;"* and secondly, the *enrolled bill was not signed by the presiding officer of the Senate.*

The Defendant county claims, that, conceding the validity of said Legislative act, still *by its provisions*, there are certain *conditions precedent* to the existence of the power of the county to issue such bonds, to wit:

Those conditions, the existence of which are denied in its above named answer.

Its location was commenced in October in 1865, and this is the only railroad ever *located* or built in said county and between said points, and it was located and built by the company or companies organized and acting under the acts and organizations above named.

FOURTH QUESTION.

And the Defendant claims as a fourth question, that as there was no *railroad located* into the county as required by said act before bonds could be issued, the issue of the bonds was void.

FIFTH QUESTION.

The question of issuing said bonds was never submitted to a vote of the electors of the county, and the only vote taken was at an election called and held *before the passage of any law authorizing it*, as set forth in said printed record, p 23, findings 8, 9 and 10, and was for $500,000 in bonds, running *twenty years* to maturity. This vote is claimed by said county, defendant, to be a nullity.

SIXTH QUESTION.

The bonds ordered by the defendant, county, to be issued and that were issued accordingly, as shown by findings 11 and 12, p. 24, of said printed record, were to run twenty years to maturity, while the bonds sued on and in evidence run but ten years.

SEVENTH QUESTION.

The plaintiff claims that the Missouri River Railroad Company, under the charter of February 27, 1860, changed its name to the Leavenworth & Missouri Pacific R. R. Company, and thereby could avail itself of the aforesaid vote by the people, but the defendant county claims that said change of name (as set forth in the 4th finding on p. 19 of said printed record) was a nullity, and not authorized by any law.

EIGHTH QUESTION.

The defendant county claims that there is no plea of estoppel in plaintiff's petition, and that there are no such recitals on the face of said bonds, as to estop it from setting up the foregoing

defects, and that in the absence of any such recitals the purchaser must be held to purchase with notlce, and said plaintiff having purchased before any subsequent actlon of the county in reference to the bonds, the county is not estopped to deny their validity.

NINTH QUESTION.

The plaintiff claims that these bonds even though invalid when issued, have been ratified and validated by the subsequent acts of the county and the people of the county in pursuance of certain acts of the Legislature, to wlt:

First, (although there is no such allegatlon in his petition) by the assignment of its certificate of stock In the Missouri River Rallroad Company on the 4th day of January, 1869, to the Atchison & N. W. R. R Co. in conslderation of said last named road's agreement with said county to build a certain Rallroad, as set forth in findings 23, 24, 25 and 26, pp. 30 and 31 of sald printed record.

The Defendant county claims that said act of the Legislature recited in said 25th finding as authorizing the county to dispose of its R. R. stock, was a special act and attempted to confer corporate power upon the county and city of Leavenworth, and hence was a violation of Art. 12, Sec. 1, of the Constitution, cited above on page 6; and further the county claims that said act if valid empowered the Board of County Commissioners *and* the Mayor and Council of Leavenworth city to act jointly in selling or disposing of stock, and in submitting the question to a vote, and not the County Board alone as was done, as appears by said 23rd and 24th findings.

The Defendant county claims further that it was *ultra vires* of the county to build a railroad or to employ said Atchison & N. W. R R. Co. to build one, and that hence said pretended assignment was without consideration and was a nullity.

And further that the certificate of stock so assigned was, as shown by the 22d finding on page 29 of said record, in the company claimed to have been chartered in 1865, the shares being

$100 each, and not in the company to which the county subscribed, as shown in said 11th and 12th findings on page 24 of said record, the shares in which were $50 each.

And further that said assignment was a nullity for the reason that the said stock was itself a nullity because it was in amouat $250,000, while the company issuing it had a capital stock of only $200,000, as appears by said 5th finding page 20 of said record.

The attempt to increase the stock as shown in said sixth finding is claimed to be a nullity because the consent of the stockholders is not shown to have been obtained.

Secondly. Said ratification is claimed by plaintiff by reason of the levy and collection of taxes by the Defendant county to pay these bonds as set forth in the 14th finding, page 25, of said record, and the payment out of the taxes so levied and collected of the coupons on the bonds issued at the time of the issue of the bonds in suit, and of which the bonds in suit are part, up to the year 1874, except that a part of the coupons of 1873 were not paid, (see 15th finding, page 27 of said record).

The Defendant county on the other hand claims that, said two acts of the Legislature "relating to taxation in Leavenworth county," copied into said 14th finding, are unconstitutional, being in violation of said Art. 12, Sec. 1, above cited on page 4; and moreover, even if valid, they provide for bonds issued to the "*Missouri River Railroad Company*," and not for the bonds in suit issued to the "*Leavenworth and Missouri Pacific Railroad Company*," and the levies of taxes in 1871, 1872 and 1873, under said law, were accordingly for bonds issued to the "Missouri R. R. R. Co.," and not for bonds issued to the "Leavenworth and Missouri Pacific R. R. Co."

And hence that these acts of the Legislature and levies o taxes for bonds issued to one road cannot be construed into a ratification of bonds issued to a different road.

As bearing upon the intention of the Legislature and Defendant county to ratify the said bonds by said laws of 1871 and 1872

said tax levies there under, it will be seen that any levy for sinking fund was expressly prohibited by said two laws, and that by a law of 1874, the county has ever since been forbidden to levy any tax either for interest or sinking fund for these bonds.

TENTH QUESTION.

The Piaintiff, in the Circuit Court, offered in evidence the aforesaid levies of taxes, as appears by said 14th finding, page 25 of said record, and then to prove that the bonds provided for by these several levies, and these two laws of 1871 and 1872, as 'bonds' issued to the Missouri River R. R. Co." were the same bonds of which the bonds in suit are part, offered *parol testimony, aliunde* the said records of the county, and the said two statutes of 1871 and 1872, to wit:

The oral testimony of witnesses, that, out of the taxes so levied as aforesaid to pay the interest on the bonds issued to the Missouri River Railroad Company, had been paid in each year the interest on the bonds of which the bonds in suit are part. (See Bill of exceptions, page 32, of said printed record.)

To this parol testimony Defendant objected as incompetent, and the decision of the Court in overruling said objection, presents a question here.

The Plaintiff is the owner and holder of the bonds and coupons sued on, and purchased the same within one year after their issue, for value, and without actual notice of any of said defenses.

And upon the foregoing case, the Court found as conclusions of law, (page 31 of record.)

1st. That the Plaintiff is entitled to recover on the bonds and coupons in suit.

2nd. That the said facts constitute no defence to the said action.

Defendant duly excepted, and judgment was rendered for Plaintiff for $19,172.42.

ASSIGNMENT OF ERRORS.

Now comes the Plaintiff in error, by its Attorneys, and assigns the following errors:

1st. The Circuit Court erred in trying the the issues of fact in said suit without a jury,

2nd. The Circuit Court erred in admitting against the objections of Defendant in error, oral evidence *aliunde* the language of the two laws of 1871 and 1872, copied into the record, pages 25 and 27, and *aliunde* the records of the county "to prove that the bonds provided for by the several tax levies mentioned, and by the said two laws of 1871 and 1872, as 'bonds issued to the Missouri River Railroad Company,' were the same bonds of which the bonds in suit are a part," which parol evidence was "the oral testimony of witnesses that out of the taxes so levied as aforesaid to pay the interest on the bonds, issued to the Missouri River R. R. Co.' had been paid in each year the interest on the bonds of which the bonds in suit are part.

3rd. The Circuit Court erred in its first conclusion of law, that the Plaintiff is entitled to recover on the bonds and coupons in suit.

4th. The Circuit Court erred in its second conclusion of law, that, the facts found, constitute no defense to the said action.

5th. The Circuit erred in rendering said judgment on said facts.

6th. That there is error in said record in this, that said judgment is given for said Defendant in error and against said plaintiff in error.

Whereas, by the law of the land, judgment should have been for said Plaintiff in error, and against said defendant in error.

Wherefore, the said Plaintiff in error, prays that the said judgment of the said Circuit Court be reversed.

BRIEF OF THE ARGUMENT.

The Code of Civil Procedure of the State of Kansas, provides as follows:

"ARTICLE 2.

SEC. 10. The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and in their place there shall be hereafter, but one form of action, which shall be called a civil action.

ARTICLE 15.

SEC. 266. * * * Issues of fact, arising in actions for the recovery of money, or of specific, real or personal property, shall be tried by a jury, unless a jury trial is waived, * * *."

SEC. 290. Upon the trial of questions of fact by the Court, it shall not be necessary for the Court to state its finding, except generally, for the Plaintiff or Defendant, unless one of the parties request it, with the view of excepting to the decision of the Court upon the questions of law involved in the trial; in which case the Court shall state, in writing, the conclusions of fact found, separately from the conclusions of law.

And in this connection we refer to 5th Section of the Act of Congress, approved June 1, 1872, "An Act to further the administration of justice," providing that the practice &c., in Circuit Courts of the U. S. shall conform, as near as may, to the practice &c., in the State Courts.

This was an action at law (pages 1–16 of record) commenced September 14th, 1875, and the trial of the issues of fact should have been by jury, governed by the law of Congress, approved March 3rd, 1875, "An act to determine the jurisdiction of Circuit Courts, and to regulate the removal of causes from State Courts, *and for other purposes*." Section 3rd, last clause, and Section 10, repealing all acts and parts of acts in conflict.

This is not a question of jurisdiction, it is a question of the power of the Court without a jury. The law says that the issues of fact *shall be tried by jury*. The parties cannot give power to the Court *against the statute to try* the issues.

The law of Congress made in pursuance of the Constitution is

should be to its stock, and the *bonds* issued *to the corporation* in payment. Until these two *conditions* of *power* exist, it is *ultra vires* of the county to issue such bonds.

That there must be a grantee *in esse*, see

Lewis vs. Commissioners of Bourbon County, 12 Kans., 186, 204.

Gulf R. R. Co. vs. Commissioners of Miami County, 12 Kans., 236.

The Land Grant Railway Co. vs. Board of Co. Com., 6 Kans., 245, 252.

The University R. R. Co. vs. W. W. Holden et al., 63 N. C., 410, 412, 418.

Ruby vs. Shain, 54 Mo., 207.

4 Kent, p. 460 to 463, side Comst., 11 Ed., "An Elementary Doctrine."

Jackson vs. Cory, 8 Johns. 386, 388, a settled principle.

2 Johns. Cas. 324, Coke. 3, a.

Sheph. Touchstone, 236: 9 Johns, 73.

The proposed corporation named in said act of February, 27, 1860, p. 17 printed record, (ante p. 6) was only a *proposal* by the Legislature to the parties named to grant them certain franchises with certain conditions and liabilities annexed, and which required their *acceptance* before becoming a contract.

1 Red. on Railw., p. 70, Sec. 8.

22 How., (U. S.) 364.

State vs. Dawson, 16 Ind., 40.

And this acceptance not having been made *before*, it could not be made *after* the adoption of Const., Art. 12, sec, 1 (ante p 6).

17 Ind., 243.

22 How. (U. S) 364.

The other pretended corporation known as Missouri R. R. R. Co. having filed its charter February 20, 1865, before there was any law authorizing it (ante p. 6 and 7) did not then or thereby become a corporation or create a franchise, and any subsequent law providing for the formation of such corporations in the fu-

ture, could impart no force or life into a previous void act.

Ruby vs. Shain, 54 Mo., 207.

9 Wis., 288; 10 Wis., 136.

Pierce vs. Jersey Water Works Company, Law Rep. 5 Ex., 209.

North Staffordshire, &c., vs. Ward, L. R., 3 Ex. 172.

And there being no corporation *in esse* by either of said pretended charters, it would seem to require no argument to show that there could be no consolidation of the two into one; and, moreover, as appears by the 7th finding of fact on p. 23 of said printed record (and ante p. 7) there was really no pretense even of a consolidation.

And it being shown that no corporation in fact ever existed, it is submitted that aside from the question of estoppel by the recitals of the bond, as to which (see infra. p. 20) defendant county is *not estopped* to deny its existence.

There is a clear and radical distinction between this case where *no franchise ever existed* and the numerous cases decided of estoppel, to deny the corporate existence of a party with whom one has entered into a contract *as* with a corporation. In all cases so decided there was a *subsisting franchise*, and a *user* under it by a *de facto* organization. So in

27 Ill., 425.

8 Wis., 151.

4 Denio, 392.

49 Ill, 416, 422, 423.

But we have found no case, where the point was necessarily involved, deciding that where no corporation *ever had existed in fact*, that is where there *never was a franchise*, that there can be no estoppel to deny it existence. Where there is *no franchise*, there can be *no user*, and hence no *de facto* corporation and hence no estoppel.

12 Kansas, 186.

6 Kansas, 245.

12 Kansas, 441.

63 N. C., 410, 412, 417, 431, 435.
Ruby vs. Shain, 54 Mo. 207.
1 Dillon C. C. 136, 137.
Russel vs. Topping, 5 McLean, 202.
25 Iowa, 12, 18.
1 J. J. Marsh, 206.
24 Wend. 520, 540.
46 Ind. 142
30 Ind. 173, 213.
49 Ill. 416, 422, 423.
Myers vs. Manhattan Bank, 20 Ohio, 283.
Canal Co. vs. Railroad Co., 4 Gill & Johns, Md. page 1, 122.

The non existence of a corporation for the reason, that, it has never had an existence is *one thing* and quite *different* from its non existence in the sense that it has *forfeited* its charter or otherwise *ceased* to exist.

This appears clearly, among other reasons by observing the various ways by which a corporation may be dissolved, none of which apply to, or *can apply* to what never has been a corporation, (Brice Ultra Vires, page, 544) and hence the law that one is estopped to deny the existence of a corporation, until the *State* has taken away its franchise, *ceases* when applied to what never was a corporation, because the reason of the law has ceased.

4th. By the 21st finding page 28 of said record, it appears that no Railroad was located into said county until July 1866, one year after the issue of these bonds; and, that, its previous location was a condition of the existence of the power to issue we think, is plain from the reading of the law, (ante page 2 Sec. 1.)

See 11, Ohio, 183.
19 Wis. 280.
2 Redf. on Railways, 403, note 6.
4 Am. L. Reg. 702.

5th. By the 8th, 9th and 10th findings, page 23, of said record, it is clear that there was no previous vote.

The pretended vote was *without any authority* of law, was for $500,000 instead of $250,000 and to run *twenty years* to maturity, instead of *ten*, as do the bonds in suit.

And the snbsequent law could not, unless so provided by the law itself, ratify or give any effect to the previous unauthorized vote.

9 Wis. 288.
10 Wis. 136.
13 Wis. 432.
14 Wis. 378.
54 Mo. 207.
49 Ill. 419, five lines from the bottom of the page.
Law Reports, 5 Ex. 209.

And if it is claimed that, said vote was ratified by the 4th Sec. of said Act, (ante page 4) it will be seen by a reference to said section that the only vote or election that could be thereby ratified, must be where a majority of all the electors of the county voted in the affirmative, a thing not pretended in this case.

Harshman vs. Bates county, 3 Dillon C. C. page 150, 162, note, affirmed in Supreme Court of U. S. in 1875.

And even in this pretended anthority for the issue of bonds—that is by such an election—the amount of bonds to be issued was not fixed by the vote—the submission and vote being for $500,000 *or as much as needed*—the time was anywhere from *one* to *twenty* years.

The voters could not delegate the determination of these fundamental questions to the County Board, they could only *vote affirmatively* or *negatively* upon the questious *definitely submitted.*

12 Kansas, 186.
Dillon on Municipal Corp. page 423.
27 Pa. State, 389.
23 Mo. 483.
48 Mo. 242.
22 Ind. 88.
27 N. Y. 439.

Brice Ultra Vires, page 382, note T. and page 383, note V.
16 Q. B. 290.
4 C. & P. 121.
18 L. J. (Q. B.) 153.
Re Leeds Banking Co., Howard's case, L. R., 1 Ch. 561.
36 L. J. (Ch.) 42.

6th. Again by reference to findings, 11 and 12, page 24 of said printed record (ante p 8) it will be seen that the only bonds subscribed or authorized by the Defendant county, to be subscribed, were to run *twenty* years to maturity. How this order and subscription can legalize or authorize these *ten year bonds* in suit, we cannot see. Being in excess of the power it was a void issue.

Story on Agency, Secs. 169, 175.
Batty vs. Cogswell, 2 Johns, 48.

7th. The change of name from Missouri River Railroad Co. to Leavenworth and Missouri Pacific Railroad Company, was not authorized by any law, nor by all the stockholders, nor by any of them at any *meeting* of the stockholders—nor indeed if it had been an authorized change of name, would it have in any sense been a change of *identity*—it would remain the same corporation as before, and entitled to no other, or additional right or franchises. See page 19 of the Record, 4th finding.

1 Redf. on Railways, page 60, Sec. 4, note 4.
Glass vs. Tifton, &c. Co., 32 Ind. 377.
3 Salk. 102.

8th. *Estoppel—There is no plea of estoppel*; and if there were, we submit that the plaintiff in error is not estopped to set up in defence any of the foregoing defects, either by the recitals on the face of the bonds, or by the subsequent conduct of the county.

1st Recitals—By reference to copy of bond, page 16, printed record, we find no express recital of the *existence* of a Railroad Corporation; or of its *location into* the county; or of any *election* or *vote* on the question, or the terms or conditions of any vote, and

there are no such *recitals implied*, unless it be in the words "*issued—under the provisions of the act of the Legislature entitled, &c*," we do not think this language can be rightfully construed into an implication, that, all the previous requirements of the law had been observed in the issue.

It is no more than an assertion that Leglslative authority existed and designating the particular act by its title.

The words "*issued under the provisions of a law*," are not equivalent to the words "*issued under and by virtue of the act, &c., and in accordance with the vote of the electors, &c., and, in accordance with said law*," as in the case of the bonds sued on in the town of Coloma vs Eaves, decided at October Term, 1875, of S C.U.S.; nor are they equivalent to the words "issued in pursuance of the 3rd Section of the act," &c, as were the recitals in the leading case of Knox County vs. Aspinwall, 21 How. 544; nor to the words issued "by virtue of and in accordance with the act of the Legislature, and in pursuance of and in accordance with the vote, &c.," as in the recitals in Marcy vs Township of Oswego, S. C. U. S. at October Term, 1875; nor to the words issued "in pursuance of the act," &c., as in Mercer County vs. Hackett, 1 Wall. 83; nor to the words issued by order of the Mayor &c., as authorized by a vote &c, in pursuance of an act," &c, as in Lexington vs. Butler, 14 Wall. 284; nor to the words "under the authority of an act, &c, and pursuant to said act," &c.; as in Woods vs. Lawrence County, 1 Black. 390; nor to the words, "issued by order of the Board, &c, pursuant to the Statute authorizing," &c., as in Moran vs. Miami County, 731; nor to the words "issued for the purpose of carrying out the provisions of the said act of the Legislature, and in accordance with the resolutions of the said Board," as in Grand Chute vs. Winegar, 15 Wall., 357.

And in this connection we would insist that as to some of these *conditions precedent* as the *existence* of the railroad corporation and the *location* of its railroad into the county and the *name*, *capital stock* and other powers and franchises of the railroad corpo-

ration, they are not such facts *in pais*, as fall more naturally or peculiarly within the knowledge of the county, than of any other person or persons; also that the statute does not designate the Board of County Commisioners as the canvassing officers.

See Lewis vs. Bourbon County, 12 Kansas, 211.

2nd. Subsequent conduct.

By reference to printed record page 16, finding first, and page 1, in petition of Plaintiff, alleging the purchase, "one year after the date" of the bonds, it will be seen that the Plaintiff became the purchaser before any of the acts or conduct of the county had occurred, which could be set up as an estoppel by conduct. None of such acts were an inducement to the purchase and could not be, being subsequent to the purchase.

8 Kansas, 189.
7 Kansas, 125.
16 Conn, 409.
2 Johns. Cases, 355.

Nor can the county be estopped by the fact of not enjoining the issue of the bonds, because under the laws of Kansas the *people* of the county — the *tax payers*, are the real parties in interest, and they have no power to enjotn the issue of the bonds.

12 Kansas, 203; 5 Kansas, 518.

And if we are right in our previous points either that there was *no law* authorizing the issue of these bonds, or that some *one* or *more* of the *essential conditions* of the *existence* or *exercise* of the power did not exist when the bonds were issued, and that the county is not *estopped* by any *recitals* of the bonds to deny the existence of the said conditions of power, then the plaintiff Barnes was charged with notice —constructive notice—of all said defects, and is not an innocent holder. The public records of the county (see printed record pp. 23, 25) and the record in the office of the Secretary of State (ibid pp. 17, 20) prove that such conditions of power did not exist, and of these the purchaser must be held to have had notice.

Lewis vs. Bourbon County, 12 Kansas, pp. 221, 222, 217; 26 Mich, 44; 51 Mo., 483; 19 Wall., 253; 19 Wis., 288, 292; 42 N. H, 125.

RATIFICATION.

9. We submit first, that there is no allegation in the petition of any ratification by the sale or disposal of the county's stock, and if there were, that said act of the Legislature copied on p. 30 of printed record, finding 25, is unconstitutional, in attempting to confer corporate power upon said county and city. See said Art. 12, Sec. 1 Const. (ante p. 6) 4 Kansas, 124, 141; 5 Kansas, 603; 10 Kansas, 503—505; 2 Dillon C. C., 357–8; 19 Wall, 676.

Second, said act, if valid, did not empower the County Board to act independently of the City of Leavenworth, but only *jointly* with it, and hence its separate action, as here, was void.

3d. Moreover its action in undertaking to employ another corporation to build a railroad was *ultra vires* of the county. Such power is not one of the ordinary powers of the county; and it is not contained in said act, which only provides for selling or disposing of railroad stock. 1 Dillon Munic Corp. Sec. 382, Brice *ultra vires*, pages 92, 94, note g. Joint Stock Co. vs. Brown, L. R., 8 Eq., 381; and hence the assignment was a *nudum factum*; 6 Kans., 245; Mayor of Kidderminster vs. Hurdwick, L. R., 9 Ex. 13, 21.

4th. The stock actually assigned was not the stock subscribed. The stock subscribed was in the Missouri River Railroad Company, of February 27th, 1860, under its name of the Leavenworth and Missouri Pacific Railroad Company, shares $50 each. The certificate of stock assigned was in Missouri River Railroad Company, shares of $100 each, chartered in 1865. Compare printed record page 24, findings 11 and 12, pages 17–20 with pages 22 and 29.

5th. Moreover said certificate, as appears on its face, is a nullity, being for $250,000 in the company chartered in 1865, with only $200,000 entire capital stock. Page 20 of record, 5th finding.

Such a railroad corporation could not by a valid contract accept a subscription larger than its capital stock—there would be

no mutuality of obligation, and hence the assignment of such void certificate would be a nullity. 6 Kans. 245; 12 Kans. 186; Green's Brice, *ultra vires*, pages 158–60; Atheneum Life Ass'n Soc. vs. Pooley, 3 D G. & J., 294.

Secondly, ratification by levy of taxes and payment of interest coupons—

1st. Said laws of 1871 and 1872, record pages 25–27, "*Leavenworth county taxation*," 14th finding are void, contravening Article 12, Section 1, of the Constitution, (ante page 6); 2 Dillon C. C., 356–358; 4 Kansas, 124; 10 Kansas 503–505; and its repugnance to said provision of the Constitution is not only, in that, it attempts to confer corporate powers upon the county by this special act, but also upon a railroad corporation, in making valid in its hands, and giving it *power to hold* that which it had not until then the power to hold. The Legislature could not in the first instance, by special act, authorize such an issue to such a grantee, and neither could it by such an act ratify. 29 Wis., 28.

2d. But even if said laws were valid, they do not provide for taxation to pay these bonds or coupons; on the contrary, there is an express prohibition of any levy then, and ever afterwards of any tax to pay the coupons on these bonds, and not only the coupons but also any part of the principal whatever.

We cannot see how, even if these bonds and coupons in suit were the same mentioned in said laws, such laws could form any basis for the ratification, since by the very terms of the laws, the county is thus restricted and forbidden to provide for the payment of any part of the principal of said bonds. A prohibition of payment is surely not a ratification of a void bond. The intention to ratify must be clear, and all reasonable doubt as to the intent of the Legislature should be resolved in favor of the citizens.

Dean vs. Charlton, 27 Wis., 522; 30 Wis., 237.

10th. The Circuit Court, we submit, erred in allowing oral testimony *aliunde* said laws of the legislative intent, and oral testimony *aliunde* the county records to show the intent of the County Board in making tax levies under said laws. See Bill of Exception, p. 32 of printed record (and ante p. 11). The effect of this oral evidence was to vary and contradict the terms of said two laws, and also of said records of tax levies. This was clearly error.

Respectfully submitted.

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IN THE SUPREME COURT

OF THE UNITED STATES.

BOARD OF COUNTY COMMISSIONERS
THE COUNTY OF LEAVENWORTH,
Plaintiff,

versus

ROBERT A. BARNES,
Defendant.

BRIEF OF DEFENDANT.

CLOUGH & WHEAT,
STILLINGS & FENLON,
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IN THE SUPREME COURT

OF THE UNITED STATES.

BOARD OF COUNTY COMMISSIONERS
THE COUNTY OF LEAVENWORTH,
Plaintiff,

versus

ROBERT A. BARNES,
Defendant.

BRIEF OF DEFENDANT.

Since the trial of this case in the Circuit Court, much that was relied on by the Plaintiff in error, has been set at rest by the decision of the Supreme Court of the State of Kansas, in case of Plaintiff in error vs. John Higginbotham, in which the validity of the law authorizing the issue of these bonds under our Constitution was fully vindicated.

We file a copy of the opinion in that case, with the papers in the case as the decision was too recent to be included in the State Reports.

Assuming then that a law held then valid by our Supreme Court under the constitution of the State, will not be questioned by any other Court, the questions which we suppose may need attention in this case, are few. As we have not been able to get a copy of the Plaintiff's brief, we suppose counsel will urge the same matters heretofore urged in defence to the bonds.

These as we remember them were:

First, The invalidity of the law to which we have have already referred.

Second, That the Leavenworth and Missouri Pacific Railroad Company, did not have such corporate existence, as to enable it to contract with the county.

Under the laws of Kansas, a Railroad Company, can change its name at pleasure.

The following is a copy of the section of the statute then in force as found on page 768 of the compiled laws of 1862.

An act relating to Railroad Companies, compiled laws of Kansas, 1862, page 768.

Sec. 3. Any such Railroad Company, by vote of persons owning a majority of its stock, at any meeting regularly called of all the stockholders of such company, may change its corporate name or the number of its directors at pleasure; and may, in like manner, make valid and effectual any acts done in good faith, and may cause to be done any acts omitted affecting the organization or affairs of such company or the continuance of its charter, though such acts may have been done or omitted contrary to the regulations of such company or the requirements of law; *provided*, the time given by law to such Railroad Company within which to commence the construction of its road shall not be hereby extended.

By virtue of this law the Missouri River Railroad Company, on the 18th of April, 1865, changed its name to that of the Leavenworth and Missouri Pacific Railroad Company, as shown on page 19 of the Record.

There were two companies by the name of Missouri River Railroad Company, one under a Special Charter by the Territorial Legislature, as shown on page 17, and one under the general law of 1865, page 20 of Record, and increase of stock by virtue of sections one and seven of the Corporation act of 1865, of which sections, the following are copies, as taken from the laws of 1865, pages 94 and 96.

INCORPORATION OF RAILROADS.

Laws of the State of Kansas for 1865, pages 94 and 95.

Be it enacted by the Legislature of the State of Kansas:

Section 7. That any number of persons, not less than nine, associating for the purpose of constructing a Railroad, shall subscribe a statement which shall specify as follows:

First, The name assumed by such Company, and by which it shall be known.

Second, The name and place of residence of each of the persons forming the Association.

Third, The name of the place, or places of the termini of said road.

Fourth, The proposed amount of Capital Stock of said Company, which shall not be less than Five Thousand dollars per mile of said Railroad.

Such statement, verified by the affidavit of three or more of the persons therein named, shall be acknowledged before some one authorized to take the acknowledgment of deeds and filed in the office of the Secretary of State, to be by him recorded in a book kept for that purpose, and a copy thereof, duly certified by the Secretary of State, shall be evidence of the existence of such Company.

Sec. 7. That, whenever any Railroad Company heretofore incorporated, or created and incorporated under the provisions of this act, shall, in the opinion of the directors thereof, require an increased amount of Capital Stock, they shall, if authorized by the holders of a majority of the stock, file with the Secretary of State, a certificate, setting forth the amount of desired increase, which shall not exceed Fifty Thousand dollars per mile of said, Railroad, and thereafter such Company shall be entitled to have such increased capital as is fixed by such certificate.

By virtue of which the company, claiming to act as the Missouri River Railroad Company under the General Law of 1865, made an increase of its stock as shown on pages 21 and 22, of the record.

The following are copies of the sections of the charter granted by the Territorial Legislature referred to on page 17, so far as we suppose the reading of the same will throw any light on this case, copied from page 406 of the Private Laws of Kansas, for 1860.

Laws of Kansas, 1860, page 407:

An Act to incorporate the Missouri River Railroad Company.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas:

Section 2. That the said company is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad with one or more tracks from Wyandotte, at or near the mouth of the Kansas River, to the City of White Cloud, in Doniphan County, via Iowa Point, provided, they will donate the right of way, with the right and privilege of extending the same to any point on the northern boundary of Kansas Territory.

Section 17. That when the citizens of any County, incorporated Town, or City of this Territory are desirous of subscribing to the stock of said Company, the citizens of such incorporated Town, City or Company, are authorized to purchase, subscribe or hold shares not exceeding Three Hundred Thousand Dollars in amount, as shall be determined by the County Court or Common Council, making such subscription in all respects as stock owned by individuals, and such Railroad Company may dispose of bonds issued for such stock by said County or Council upon such terms as may be necessary.

These two Companies attempted to consolidate in pursuance of the Statute of Kansas. The Section of which is applicable to such cases as found on page 767 of General Laws of Kansas, of 1862, is as follows:

Laws of 1862, page 767 and 8.

An Act relating to Railroad Companies.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Any Railroad Company now organized, or which shall hereafter organize under the Laws of Kansas, may, at any meeting regularly called of all the stockholders thereof, by vote of persons holding a majority of the stock of such Company, unite or consolidate it with any other Company or Companies now organized or which may be hereafter organized under the Laws of the United States or of any State or Territory, by the consent of the Company with which it may so consolidate and unite, and such Company or Companies with which it shall so unite or consolidate may hold in and enjoy all the rights and privileges conferred by the Laws of Kansas on the Company or Companies so uniting or consolidating with it, and shall be liable for all the debts and own all the property and franchises of such Company or Companies;

Provided, That any Companies thus united for the purpose of the construction of a Railroad and branches thereof from the western boundary of the State of Missouri to the Pacific Ocean, shall upon equal terms, have the right to run through cars upon said Pacific Railroad as far and as fast as the same is completed from the points on the Missouri River from which said road or branches shall start or where such roads or branches shall cross said river; and that such roads or branches shall have the right to connect with said Pacific Railroad at such points as may be determined by the respective roads or branches; and that such roads or branches shall share equally in the proceeds of any public lands which may be hereafter ceded or granted by any treaty with any Indian Tribe or by any act of Congress to aid in the construction of any or all such roads; but this amendment shall not apply to the lands already by treaty ceded by the Pottawatomie Indians by a treaty now pending in the United States Senate. Such proceeds to be applied in proportion to the length of

the line of each road from the respective points on the Missouri River where such roads shall start or cross the same to the points of connection; and that such branches shall have the right to transport passengers and freight upon through cars or otherwise upon equal terms and to enjoy equal facilities in respect to contracts for freight or passage on such Pacific Railroad in every respect."

The attempted consolidation is shown on page 23 of the record, and no member of either Company has ever questioned the sufficiency of the consolidation. These companies completed the Railroad as contracted for, and the same has been run ever since and no question has ever been made as to the validity of the charter of either Company, or of the consolidation, till made in this action in defense of the bonds. See pages 28 and 29 of the Record. On the 21st of April, 1865, the County Board subscribed $250,000 to the stock of the Leavenworth and Missouri Pacific Railroad Company (p. 20, record) and on the 1st day of July following, the bonds were issued by the County to the Leavenworth and Missouri Pacific Railway Company (p. 29 of record) and on the 13th day of July following, the consolidation of the two Companies took place (23) and on the 20th of December following the stock was issued in payment for the bonds to the County by the Company, under the name of the Missouri River Railroad Company (p. 29). This stock was sold and transferred by the County on the 4th day of January, 1869 (p. 29), which sale was made by virtue of a law passed by the Legislature copied on page 30 of the Transcript and in pursuance of a submission to and vote by the people of the County of Leavenworth, as shown on page 30 of the record. This law was amended by the Legislature as appears on page 31 of the record. Taxes were levied and collected by the Board of County Commissioners of Leavenworth County for the payment of interest on these and other bonds for the years 1866, 1867, 1868, 1869, 1870, 1871, 1872 and 1873 (see page 25 of record)

and the coupons for interest on the bonds paid out of such taxes (see record, p 27). For the years 1871, 1872 and 1874 laws were passed authorizing and prescribing the rate of per cent. to be levied for payment of interest on these and other bond (pages 25, 26 and 27 of record).

The same officers and parties managed and controlled both companies, and had completed the railroad as early as July, 1865, (see record, 28 and 29), which road has been in operation from that to the present time. After the consolidation, the entire enterprise went by the name of the Missouri River Railroad Company. The county made part of its contract with the company by the name of the Leavenworth and Missouri Pacific Railroad Company, and after the consolidation took the stock in the name of the Missouri River Railroad Company, and levied and collected taxes, and paid interest on those bonds for nine years, and dealt with and contracted to sell and did sell the stock issued in exchange for their bonds, and has never offered to return the stock, and has actually, by the action of the County Board authorized by a vote of the people of the county, and acts of the Legislature, placed it out of the ~~person~~ power of the county to restore the stock.

The Defendant in error is the owner of the bonds for value and *bona fide* before due.

The following joint resolution copied from the laws of Kansas for 1866, page 249, will further illustrate the dealings of the people, County Board and Legislature in reference to this stock and these bonds, to wit:

Laws of Kansas, 1866, pages 249 and 250.

RAILROAD STOCKS.

A joint resolution in relation to the sale of certain railroad stock.

Be it resolved by the Legislature of the State of Kansas:

Second, That the Board of County Commissioners of the county of Leavenworth are hereby authorized to sell the stock

owned by said county in the Missouri River Railroad Company at a price not less than fifty cents on the dollar, and the stock in the Union Pacific Railroad Company, Eastern Division, owned by said county, at not less than par.

The question now proposed is, can the purchase of negotiable securities before due, after such securities have been issued, placed on the market and kept in credit for nine years by regular payments of interest thereon, and the use and appropriation of the stock received by the county in consideration for the bonds ratified, and re-ratified by the County Board, by the Legislature, and last, but not least, by the people of the oounty at the polls, be defeated by such sheer technicalities as the failure of the Boards of Railroad Companies to keep more complete records of their organizations, changes of names or consolidations?

Whatever question could have been made originally, as to any such supposed irregularities, such questions are forever disposed of by the various acts of the Legislature authorizing the levy of taxes and the disposal of the stock, and the acts of the County Board and the people of the county themselves. Shown by the findings. The case in 3d Kansas 104, the city of Atchison vs Ephriam Butcher, has settled the principles of law under which the acts of the Legislature and County Board and the people of Leavenworth county have fully ratified these bonds, if any ratification was at that time necessary to make them valid. The decision, however, is nothing more than the doctrines so constantly held by this Court.

With reference to the claim of plaintiff in error that because of the first Section of Article 12 of the Constitution of the State of Kansas, or resolutions conferring power on plaintiff in error is void, we refer to the cases of the State *ex rel.* vs. Commissioners Pawnee County, 12 Kansas, 439; Beach vs. Leahy, 11 Kansas, 23-30, which shows that the Legislature was not by that Section 1, prohibited from conferring corporate powers on counties.

The Plaintiff in error is absolutely estopped on every principle of the rights of estoppal and of equity and justice from setting up any and every of the defences claimed by it.

Evansville &c. R. Co. vs. Evansville, 15 Indiana, 396 and 415.

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